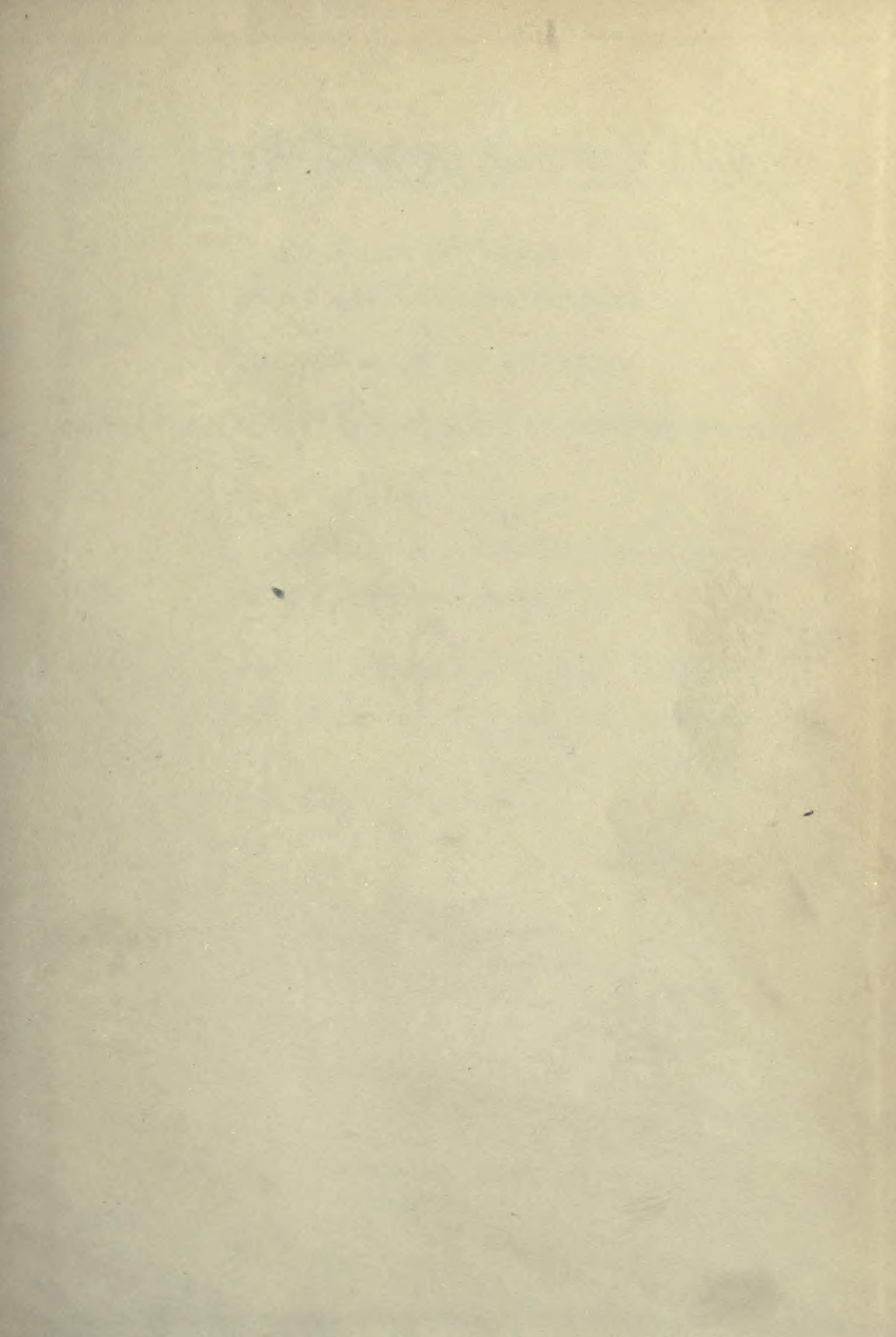
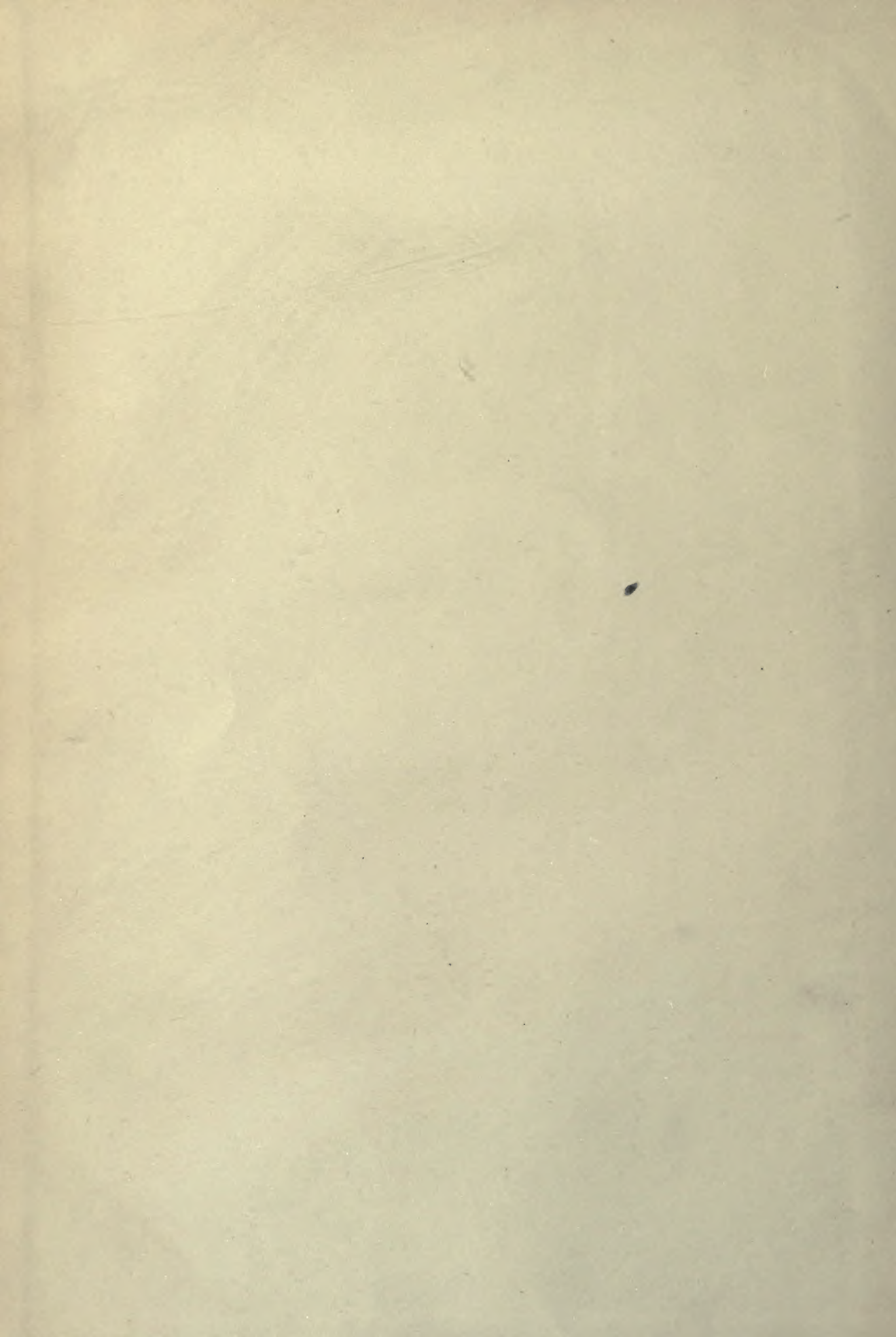


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# Limitation of Common Carrier's Liability.

Laws governing the settlement of  
**CLAIMS AGAINST COMMON CARRIERS**  
for  
**LOSS, DAMAGE, INJURY, AND DELAY**  
to  
**PROPERTY TRANSPORTED IN INTERSTATE AND FOREIGN COMMERCE :**



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**REPRODUCTION OF CHAPTER 20**  
of  
**LOOSE-LEAF TRAFFIC LAW SERVICE**

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*Traffic Law Service Series*

By  
**HON. HARRY C. BARNES**  
*Commerce Attorney and Counsel  
of the Chicago Bar.*

*First edition*

**TRAFFIC LAW SERVICE CORPORATION**  
**CHICAGO.**

211207  
9.4.27



Price, \$7.50, delivered



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ARRANGEMENT OF PAGES.

First:	Analysis.	Pink Pages.
Second:	Subject-Matter.	White Pages.
Third:	Index.	Green Pages.
Fourth:	Table of Cases.	Yellow Pages.



This work is dedicated

to the Memory of My Deceased Brother,

**Frederick George Barnes, L. L. B.**

whose sterling character, kind and lovable disposition, and sincerity as a friend endeared him to all with whom he came in contact. His preparation for life prepared him for an untimely death. The inscription of this work is but a slight memorial of the author's affection for a beloved brother, whose exemplary life has ever been an inspiration to him in his work. "*Quos virtus coniungit, mors non potest dividere.*"



## PREFACE.

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"LIMITATIONS OF COMMON CARRIER'S LIABILITY" treats of the laws governing the settlement of claims against common carriers for loss, damage, injury, and delay to property transported in interstate and foreign commerce. It covers all questions involving claims between shippers and carriers, including the status of carriers' liability and the validity of limited-liability clauses in bills of lading under Section 20 of the Interstate Commerce Act, as developed by the "Carmack Amendment" and the "Cummins Amendments."

The purpose of the work is to state the present law governing every proposition involving carrier's liability in interstate and foreign commerce in a manner that is readily understandable in its application to every day problems. Toward the accomplishment of this object, great care has been exercised in the production of a comprehensive Analysis, a lucid and authoritative Subject-Matter with copious notes, and complete citation of cases, a detailed Index, and a complete Table of Cases.

In the production of the manuscript, the most extensive and profound research work was necessitated by reason of the great conflict of law encountered not only as between the State and Federal Courts, but between the lower Federal Courts themselves. Added to this difficulty is the fact that the subject of "LIMITATION OF COMMON CARRIER'S LIABILITY" has passed through an evolutionary period extending from the passage of the "Carmack Amendment" on June 29, 1906, through the first "Cummins Amendment" of March 4, 1915, and the second "Cummins Amendment" of August 9, 1916; with the result that today there is little substantial difference between the liability of the carrier for loss, damage, and injury to property transported in interstate and foreign commerce, imposed by the common law, *as administered in the United States Courts*, and that imposed by statute.

The common-law rule that the carrier cannot be required to transport goods to a point beyond its own line has been entirely abrogated by the "Carmack Amendment" to Section 20 of the Interstate Commerce Act so far as shipments subject to that Act are concerned. The "Carmack Amendment" created only one new liability—that of the initial carrier for loss or damage caused by a connecting carrier.

The clause in the "Carmack Amendment" making the initial carrier liable for loss or damage to goods on its own line or the lines of connecting carriers, is declaratory of the common law; the clause forbidding it by receipt, contract, rule, or regulation to exempt itself from the liability imposed is in derogation of the common law. This amendment imposes the ordinary "common-law liability," and denies the common-law right to contract for special exemptions therefrom, and the word "caused" implies not only the act of misconduct and deeds of commission, but also passive neglect, deeds of omission and failure to exercise duties faithfully.

As interpreted by the United States Supreme Court, a liability for some default in its common-law duty as a common carrier, and not *liability as an absolute insurer*, is what is imposed by the "Carmack Amendment" making the initial carrier liable to the holder of the bill of lading for "any loss, damage, or injury to such property *caused* by it," or by any connecting carrier to whom the property may be delivered.

Prior to the enactment of the "Carmack Amendment" of June 29, 1906, the entire subject of carrier's liability was governed by the statutes of the several States, and the common law as administered in the State Courts, which necessarily varied in accordance with the laws of the several sovereign States. The United States Supreme Court has held that the intent of Congress to take possession of the subject of the liability of the carrier under contracts for interstate shipment, and to supersede all State regulations with respect



to that subject, so clearly appears from the "Carmack Amendment" as to invalidate, as applied to interstate shipments, the provisions of any State law nullifying a contract limiting the liability of the carrier for loss or damage to the agreed or declared value; that the provisions of the "Carmack Amendment" relating to the limitation of liability manifests the purpose of Congress to bring contracts for interstate shipments under one uniform rule of law, and, therefore, withdraws them from the influence of State regulation; that the Federal power under Section 20 of the Act is exclusive and supreme and supersedes all State regulations upon the same subject.

Therefore, inasmuch as every case involving the loss, damage, or injury to property transported in interstate or foreign commerce, arises under Section 20 of the Interstate Commerce Act and presents a Federal question, the decisions of State Courts no longer possess controlling efficacy, but the law on the subject is to be found in the decisions of the United States Supreme Court administering the common law on the subject as modified by the statute in question. As stated by the United States Supreme Court, "the rule of the common law is not an arbitrary fiat, but an embodiment of the plain fact that the actual loss caused by the breach of a contract is the loss of what the contractee would have had if the contract had been performed, less the proper deductions." Therefore, each case must be considered upon its merits and the importance of ascertaining the exclusive holding of the United States Courts upon the particular proposition of law is too apparent to require further elucidation.

All legal works heretofore published on the subject of the rights and liabilities of shippers and carriers have been rendered obsolete; as far as interstate and foreign commerce is concerned, by the interpretation and construction of Section 20 of the Interstate Commerce Act by the United States Supreme Court. Of course, intrastate traffic remains controlled by the laws of the several States.

In analyzing the law on this subject a great many United States Supreme Court decisions which apparently decide a given proposition of law prove worthless when the fact is developed that the cause of action arose prior to certain Congressional action. This is especially true with reference to bills-of-lading provisions governing the notice of and filing of claims with carriers. Special attention, therefore, must be given to the *date* upon which a case is decided in considering its governing application to a particular proposition of law, inasmuch as many cases have no controlling efficacy as precedents under the Interstate Commerce Act in its present state.

In this work is treated fully the many leading decisions of the United States Supreme Court governing this subject including the following controlling cases: *McCaul-Dinsmore Co., Primrose, Lockwood, Hart, Piper, Riverside Mills, Croninger, Dettlebach, Prescott, Starbird, Olivit Bros., Carl, Harriman Bros., Blish Milling Co., Burke, Pierce Co., Rankin, Robinson, Ward, Leatherwood, Cramer, Sealy, Neiman-Marcus Co., Hooker, Reid, Collins Produce Co., etc.*

In this work all captions and sub-captions are stated in technical language, and each proposition of law should be read with particular reference to the heading. It is also suggested that the authority citations and notes appended to each proposition be thoroughly considered inasmuch as they contain valuable explanatory statements and guiding information.

This work is printed verbatim from Chapter 20 of Loose-Leaf TRAFFIC LAW SERVICE, the manuscript of which was produced at a great expenditure of professional time and money. In offering this work to the public in bound form, at a modest price, it is with the desire that the information contained therein may be disseminated as widely as possible in the hope that it may prove of some assistance to the transportation world generally.

TRAFFIC LAW SERVICE CORPORATION.



# ABBREVIATIONS AND TERMS.

## KEY TO CITATION REPORTS

Abb. U. S. ....	Abbott, U. S. Circuit and District Courts, 1865-71.
Am. Law Reg. ....	American Law Register, (O. S.) Old Series, (N. S.) New Series.
App. D. C. ....	Appeal Cases, (D. C.)
Atl. ....	Atlantic Reporter.
Bee ....	Bee, (U. S.)
Ben. ....	Benedict, (U. S.)
Biss. ....	Bissell, (U. S.)
Black ....	Black, (U. S.)
Blatchf. ....	Blatchford, (U. S.)
Bond ....	Bond, (U. S.)
C. C. A. ....	United States Circuit Court of Appeals, from 1892.
Cliff. ....	Clifford, (U. S.)
Conf. Rul. Bul. ....	Conference Rulings Bulletin of the Interstate Commerce Commission.
Cranch ....	Cranch, (U. S.)
Ct. Cl. ....	Court of Claims, (U. S.)
Curt. ....	Curtis, (U. S.)
Dall. ....	Dallas, (U. S.)
Deady ....	Deady, (U. S.)
Fed. Cas. ....	Federal Cases, (U. S.)
Fed. Rep. ....	Federal Reporter, United States Circuit and District Courts from 1880 and all of the Circuit Courts of Appeals from their organization.
Flip. ....	Flippin, (U. S.)
Holmes ....	Holmes, (U. S.)
How. ....	Howard, (U. S.)
Hughes ....	Hughes, (U. S.)
I. C. C. Rep. ....	Interstate Commerce Commission Reports.
I. C. Rep. ....	Interstate Commerce Reports.
In. Rev. Rec. ....	Internal Revenue Record, New York, from 1865.
Johns., (N.Y.) ....	Johnson, New York Supreme Court, etc., 1806-23.
L. Ed. ....	United States Supreme Court Reports, Lawyers' Edition.
L. R. A. ....	Lawyers' Reports, Annotated.
Mason ....	Mason, (U. S.)
McAll. ....	McAllister, (U. S.)
McLean ....	McLean, (U. S.)
N. C. C. A. ....	Negligence and Corporation Cases Annotated.
Newb. Adm. ....	Newberry, U. S. District Courts in Admiralty, 1842-57.
N. E. ....	Northeastern Reporter.
N. W. ....	Northwestern Reporter.
N. Y. Leg. Obs. ....	The New York Legal Observer, 1842-54.
N. Y. Supp. ....	New York Supplement Reporter.
Olcott ....	Olcott, (U. S.)
Otto ....	Otto (U. S.)
Pac. ....	Pacific Reporter.
Paine ....	Paine, (U. S.)
Pet. ....	Peters, (U. S.)
Sawyer. ....	Sawyer, (U. S.)
S. E. ....	Southeastern Reporter.
Sou. ....	Southern Reporter.
S. W. ....	Southwestern Reporter.
Story ....	Story, (U. S.)
Sup. Ct. Rep. ....	United States Supreme Court Reporter.
Tar. Cir. ....	Tariff Circular of the Interstate Commerce Commission.
U. S. ....	United States Supreme Court, from 1791. So cited from 1875. See Dall., Cranch, Wheat., Pet., How., Black, Wall. and Otto.
U. S. App. ....	United States Appeals.
U. S. C. C. ....	United States Circuit Court.
U. S. C. C. A. ....	United States Circuit Court of Appeals.
U. S. D. C. ....	United States District Court.
Wall, Jr. ....	Wallace, Junior, (U. S.)
Wall, Sr. ....	Wallace, Senior, (U. S.)
Ware ....	Ware, (U. S.)
Wheat. ....	Wheaton, (U. S.)
Woods ....	Woods, (U. S.)

## GLOSSARY

Ab initio ....	From the beginning.
Ad valorem ....	According to the value, <i>e. g.</i> , a duty or tax.
A fortiori ....	By so much the stronger; all the more.
Aliunde ....	From elsewhere, from another source, <i>e. g.</i> , <i>proof aliunde</i> .
Amicus curiae ....	A friend of the court. One who, for the assistance of the court, gives information of some matter of law in regard to which the court is doubtful or mistaken. This is usually done by filing a brief in the cause.
Ante ....	Before. This word refers to a previous part of the work outside of the section in which it occurs.
A posteriori ....	See "Argument."
A priori ....	See "Argument."
Argument ....	Argument is divided into (a) <i>a priori</i> , from the antecedent or cause to the generally understood consequent or effect; and so in ordinary parlance <i>a priori</i> means "at first sight;" (b) <i>a posteriori</i> , from the consequent or effect to the antecedent, or cause.
Bona fide ....	In good faith; honestly; without fraud or unfair dealing.
Causa proxima, non remota spectatur ....	The immediate, not the remote cause is to be regarded.



Certiorari	.....To be more fully informed. An original writ or action whereby a cause is removed from an inferior to a superior court for trial. The record of the proceedings is then transmitted to the Superior Court.
Contra	.....Against; contrary to.
De minimis non curat lex	.....The law takes no account of trifles.
De novo	.....Anew; afresh.
Dictum	.....Or <i>obiter dictum</i> . The expression by a judge of an opinion on a point of law arising during the hearing of a case, which, however, is not necessary for the decision of that case. A dictum is not, therefore, binding on other judges.
Eo nomine	.....By that name; of itself.
Et. al.	..... <i>Et alius</i> ; and others. This term appearing as a suffix to the name of the plaintiff or defendant in a case signifies that there are other parties to the suit not appearing in the style of same.
Et. seq.	..... <i>Et sequetur</i> ; refers to consecutive numbers immediately following.
Ex contractu	.....Actions <i>ex contractu</i> ; those which arise out of contract.
Ex delicto	.....Actions <i>ex delicto</i> , those which arise out of the tort or default of the defendant.
Ex gratia	.....As a matter of favor.
Ex officio	.....By virtue of his office.
Ex parte	.....Of the one part. An action is <i>ex parte</i> when it is not an adverse proceeding against any one else.
Ex post facto	.....Made after the occurrence; <i>e. g.</i> , legislation which has, or would have if passed, a retrospective application.
Ex. rel.	..... <i>Ex relatione</i> : on the relation or information.
Haec verba	.....In the exact language; word for word; verbatim.
Ibid	..... <i>Ibidem</i> ; the same; <i>e. g.</i> , the same volume, case or citation immediately preceding.
Ignorantia juris, quod quisque scire tenetur, non excusat	.....Ignorance of the law, of which everyone is presumed to know, excuses not.
Infra	.....Below. This work refers to subsequent matter in the same section.
In limine	.....At the outset.
In loco parentis	.....In place of a parent.
In re	.....In the matter of; used in entitling matters in court other than actions between adverse parties.
In rem	.....Against the thing; actions <i>in rem</i> are against a thing as distinguished from actions <i>in personam</i> (against a person).
Inter alia	.....Among other things.
Inter partes	.....Between the parties.
Inter sese	.....Among themselves.
In toto	.....In the whole; altogether.
In transitu	.....In transit, or removal from one place to another.
Ipsissimis verbis	.....In the identical words—as opposed to <i>substantially</i> .
Nunc pro tunc	.....By the very act itself, <i>i. e.</i> , as the necessary consequence of the act. A proceeding taken, judgment declared, etc., <i>now for then</i> . Where a proceeding, etc., has been delayed by the action of the court or Commission, or any like ground, the tribunal may allow it to be dated as if it had taken place or been delivered on the earliest date.
Obiter dictum	.....A saying by the way. An opinion of a judge, not necessary to the judgment given of record, and consequently of less authority.
Onus probandi	.....Burden of proof.
Parī materia	.....In the same matter; on the same subject.
Particeps criminis	.....A partner in crime.
Pendente lite	.....While the suit is pending.
Per contra	.....On the other hand.
Per curiam	.....By the court.
Per diem	.....By the day.
Per se	.....By itself; and of itself.
Post	.....After. This word refers to a subsequent part of the work outside of the section in which it occurs.
Pro rata	.....In proportion.
Pro tanto	.....For so much; to that extent.
Quaere	.....Inquire; meaning that the question or proposition, to which the word is appended, is a doubtful one.
Quantum meruit	.....As much as he has earned. A form of action brought by one party to a contract against the other, not founded on the contract itself, but on an implied promise to pay for so much as the party suing has done. If one party refuses to perform his part, the other may rescind and sue on a quantum meruit.
Res	.....A thing, or things.
Res ipsa loquitur	.....A phrase often used in actions for injury by negligence where no proof of negligence is required beyond the accident itself, which is such as necessarily to involve negligence.
Res judicata	.....A point already judicially decided; it is conclusive until the judgment is reversed.
Sub silentio	.....In silence.
Sui juris	.....Of his own right. A person who is neither a minor nor insane, nor subject to any other disability, is said to be <i>sui juris</i> , <i>i. e.</i> , able to make contracts and act in his own right.
Status quo	.....The existing state of things at any given date. To leave in <i>statu quo</i> , is to leave unaltered.
Supra	.....Above. This word refers to preceding matter in the same section.
Ultra vires	.....Beyond their powers.
Via	.....By way of.
Vīs major	.....Irresistible force; inevitable accident.





**CHAPTER 20.**  
**(Sections 2000-2099.)**

**LIMITATION OF COMMON CARRIER'S LIABILITY.**  
**INITIAL CARRIER'S LIABILITY.**

**ANALYSIS.**

**SECTION**

**SYNOPSIS OF SUBJECT-MATTER**

**2000. Common-law liability of common carriers for loss, damage, or injury to property transported, as administered by the United States Courts.**

- A. GENERAL SURVEY OF THE SUBJECT OF THE LIABILITY OF COMMON CARRIERS UNDER THE COMMON LAW.
- B. LIABILITY OF A COMMON CARRIER AS AN INSURER OF THE PROPERTY TRANSPORTED.
- C. LIABILITY OF A COMMON CARRIER FOR DELAY TO PROPERTY IN TRANSIT.
- D. EXEMPTION OF COMMON CARRIER FROM LIABILITY FOR LOSS OR DAMAGE TO PROPERTY CAUSED BY THE ACT OF GOD.
- E. EXEMPTION OF COMMON CARRIER FROM LIABILITY FOR LOSS OR DAMAGE TO PROPERTY CAUSED BY THE PUBLIC ENEMY.
- F. EXEMPTION OF COMMON CARRIER FROM LIABILITY FOR LOSS OR DAMAGE TO PROPERTY CAUSED BY THE ACT OR NEGLIGENCE OF THE SHIPPER.
- G. EXEMPTION OF COMMON CARRIER FROM LIABILITY FOR LOSS OR DAMAGE TO PROPERTY CAUSED BY THE PUBLIC AUTHORITY.
- H. EXEMPTION OF COMMON CARRIER FROM LIABILITY FOR LOSS OR DAMAGE TO PROPERTY CAUSED BY THE INHERENT VICE OR NATURE OF THE GOODS.
- I. NECESSITY THAT THE EXCEPTED CAUSE CLAIMED AS A DEFENSE BY THE CARRIER BE THE PROXIMATE CAUSE OF THE LOSS OR INJURY COMPLAINED OF.
- J. COMMON-LAW LIABILITY OF THE INITIAL CARRIER FOR THE THROUGH TRANSPORTATION.
- K. LIABILITY OF EXPRESS COMPANY AS A FORWARDER.
- L. LIABILITY OF INTERMEDIATE AND TERMINAL CARRIERS AT COMMON LAW.
- M. DUTY OF SHIPPER OR CONSIGNEE TO PREVENT INCREASING OF LOSS.
- N. DAMAGES FOR MENTAL SUFFERING ONLY ARE NOT RECOVERABLE FROM A CARRIER ON ACCOUNT OF ITS DELAY IN THE DELIVERY OF AN INTERSTATE SHIPMENT.
- O. BENEFITS OF INSURANCE.
- P. INVALIDITY OF PROVISIONS OF SHIPPING CONTRACT EXEMPTING CARRIER FROM NEGLIGENCE.
- Q. LIABILITY OF CARRIER AS A WAREHOUSEMAN.

**2001. Limitation of common carriers' liability at common law for loss, damage, or injury to property transported in interstate commerce.**

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- B. A CONTRACT EXEMPTING CARRIER FROM ALL LIABILITY FOR LOSS OR DAMAGE TO PROPERTY SHIPPED, EXCEPT BY ITS FRAUD OR NEGLIGENCE.
- C. AT COMMON LAW THE CARRIER AND SHIPPER WERE PERMITTED TO FIX BY MUTUAL AGREEMENT, A BONA FIDE VALUE IN COMPUTING LOSS OF, OR DAMAGE TO A SHIPMENT.
- D. A CARRIER MAY NOT, BY A VALUATION AGREEMENT WITH A SHIPPER, LIMIT ITS LIABILITY IN CASE OF LOSS OR DAMAGE BY NEGLIGENCE OF AN INTERSTATE SHIPMENT TO LESS THAN THE REAL VALUE THEREOF, UNLESS THE SHIPPER IS GIVEN A CHOICE OF RATES BASED ON VALUATION.
- E. LIMITATION OF LIABILITY FOR LOSS OF GOODS CAUSED BY "THE AUTHORITY OF LAW."
- F. BINDING EFFECT OF ACT OF OWNER'S AGENT IN SIGNING CONTRACT OF SHIPMENT CONTAINING LIMITED-LIABILITY PROVISIONS.
- G. VALIDITY OF A CONTRACT EXECUTED BY A PERSON SUI JURIS.
- H. LIMITED-LIABILITY PROVISIONS IN BILL OF LADING OF STEAMSHIP COMPANY.

**2002. Evolution of the provisions of Section 20 of the Interstate Commerce Act governing the initial carrier's liability and the limitation of carrier's liability.**

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- B. PROVISIONS OF THE FIRST "CUMMINS AMENDMENT," APPROVED MARCH 4, 1915.
- C. PROVISIONS OF THE SECOND "CUMMINS AMENDMENT" APPROVED AUGUST 9, 1916.
- D. PRESENT STATUS OF SECTION 20 OF THE INTERSTATE COMMERCE ACT GOVERNING THE INITIAL CARRIER'S LIABILITY AND THE LIMITATION OF CARRIER'S LIABILITY.
- E. "POMERENE BILLS OF LADING ACT," APPROVED AUGUST 29, 1916.
- F. "HARTER ACT," APPROVED FEBRUARY 13, 1893.

**2003. Status of the common-law liability of the common carrier under Section 20 of the Act.**

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- B. THE LIABILITY IMPOSED BY THE "CARMACK AMENDMENT" TO SECTION 20 OF THE ACT IS THE LIABILITY IMPOSED BY THE COMMON LAW.
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- D. THE "CARMACK AMENDMENT" ABROGATES THE COMMON-LAW RIGHT OF THE INITIAL CARRIER TO LIMIT ITS LIABILITY TO ITS OWN LINE.
  - E. MEANING OF THE PHRASE "ANY REMEDY OR RIGHT OF ACTION WHICH HE HAS UNDER THE EXISTING LAW."
  - F. THE CONSTRUCTION OF A LIMITED-LIABILITY PROVISION IN A CONTRACT GOVERNING AN INTERSTATE SHIPMENT PRESENTS A FEDERAL QUESTION.
  - G. FEDERAL POWER UNDER SECTION 20 OF THE INTERSTATE COMMERCE ACT IS EXCLUSIVE AND SUPERSEDES ALL STATE REGULATION UPON THE SAME SUBJECT, INCLUDING PROVISIONS OF STATE CONSTITUTIONS.
  - H. LIMITED-LIABILITY CONTRACTS TO ADJUST RATES ARE NOT FORBIDDEN BY SECTION 20 OF THE ACT WHEN AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION.
  - I. MEASURE OF THE RIGHTS AND LIABILITIES OF PARTIES TO AN INTERSTATE SHIPMENT.
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  - C. INITIAL CARRIER NOT EXEMPTED FROM LIABILITY BY CONTRACT OR OTHER LIMITATION.
  - D. A CARRIER RECEIVING GOODS FOR INTERSTATE SHIPMENT IS CONCLUSIVELY TREATED AS HAVING MADE A THROUGH CONTRACT OF CARRIAGE FROM POINT OF ORIGIN TO POINT OF DESTINATION.
  - E. LIABILITY OF INITIAL CARRIER FOR THE FULL ACTUAL LOSS, DAMAGE, OR INJURY TO THE PROPERTY TRANSPORTED, NOTWITHSTANDING ANY LIMITATION OF LIABILITY, OR OF THE AMOUNT OF RECOVERY, OR REPRESENTATION OR AGREEMENT AS TO VALUE.
  - F. PURPOSE OF THE "CARMACK AMENDMENT."
  - G. NATURE AND SCOPE OF LIABILITY IMPOSED UPON THE INITIAL CARRIER BY THE "CARMACK AMENDMENT."
  - H. LIABILITY OF THE INITIAL CARRIER FOR DAMAGES SUSTAINED BY REASON OF DELAY TO PROPERTY TRANSPORTED IN INTERSTATE AND FOREIGN COMMERCE.
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- J. LIMITED-LIABILITY PROVISIONS OF SECTION 20 OF THE ACT NOT APPLICABLE TO THE CARRIAGE OF BAGGAGE.
- K. LIMITED-LIABILITY PROVISIONS OF SECTION 20 OF THE ACT INAPPLICABLE TO PROPERTY, OTHER THAN ORDINARY LIVE STOCK, WHERE RATES DEPENDENT UPON DECLARED VALUATION ARE AUTHORIZED OR REQUIRED BY THE INTERSTATE COMMERCE COMMISSION.
- L. LIMITED-LIABILITY PROVISIONS OF SECTION 20 INAPPLICABLE TO LIVE STOCK, OTHER THAN "ORDINARY LIVE STOCK."
- M. CONSTITUTIONALITY OF PROVISIONS OF SECTION 20 OF THE ACT GOVERNING INITIAL CARRIER'S LIABILITY.
- N. LIMITED-LIABILITY PROVISIONS OF SECTION 20 OF THE ACT APPLICABLE TO PROPERTY RECEIVED FOR TRANSPORTATION FROM ANY POINT IN THE UNITED STATES TO A POINT IN AN ADJACENT FOREIGN COUNTRY.
- O. THE LIABILITY PROVISIONS OF SECTION 20 OF THE ACT DO NOT APPLY TO COMMERCE BETWEEN THE UNITED STATES AND NONADJACENT FOREIGN COUNTRIES.
- P. STATUTE NOT APPLICABLE TO FOREIGN COMMERCE TO COUNTRIES NOT ADJACENT WHERE THE INLAND RAIL MOVEMENT IS WHOLLY WITHIN ONE STATE.
- Q. LIABILITY PROVISIONS OF SECTION 20 OF THE ACT DO NOT EXTEND TO TRAFFIC NOT YET DELIVERED INTO THE POSSESSION OF THE CARRIER FOR TRANSPORTATION.
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- S. STATUS OF INITIAL CARRIER'S LIABILITY WHERE GOODS ARE HELD IN TRANSIT BECAUSE OF INTERRUPTED TRANSPORTATION.
- T. STOPPING CAR IN TRANSIT TO RECEIVE ADDITIONAL LADING DOES NOT IMPAIR THE SHIPPER'S RIGHT AGAINST THE INITIAL CARRIER UNDER SECTION 20 OF THE ACT.
- U. INITIAL CARRIER LIABLE UNDER SECTION 20 OF THE ACT, ON AN INTERSTATE SHIPMENT, REGARDLESS OF THE CHARACTER OF THE CONNECTING CARRIER.
- V. LIABILITY OF INITIAL CARRIER WHERE TRAFFIC IS DIVERTED WRONGFULLY BY THE CONNECTING CARRIER.
- W. LIABILITY OF THE INITIAL CARRIER WHERE THE CONNECTING CARRIER DIVERTS A SHIPMENT WITH ITS CONSENT.
- X. INITIAL CARRIER NOT LIABLE WHERE THE TRAFFIC IS DIVERTED BY THE CONNECTING CARRIER TO A POINT BEYOND THAT SHOWN IN THE BILL OF LADING AND WITHOUT THE CONSENT OF THE INITIAL CARRIER.
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- GG. STATUS OF A SWITCHING CARRIER PERFORMING A SERVICE AS AGENT FOR THE INITIAL CARRIER.
- HH. WHEN THE LIABILITY OF THE INITIAL CARRIER CEASES.
- II. INITIAL CARRIER OF AN INTRASTATE SHIPMENT NOT LIABLE FOR DAMAGES SUSTAINED TO THE PROPERTY AFTER THE SAME IS RESHIPED IN INTERSTATE COMMERCE UNDER A NEW BILL OF LADING.
- JJ. AN ACTION AGAINST THE INITIAL CARRIER UNDER SECTION 20 OF THE ACT IS NOT ONE REDRESSIBLE UNDER SECTION 9 OF SUCH STATUTE.
- KK. INITIAL CARRIER'S LIABILITY IS NOT AFFECTED BY THE ACCEPTANCE OF INTERSTATE TRAFFIC ROUTED BY THE SHIPPER OVER A ROUTE NOT ORDINARILY USED BY THE CARRIER.
- LL. MEANING OF THE TERM "LAWFUL HOLDER" OF THE BILL OF LADING.
- MM. SECTION 20 OF THE ACT NOT APPLICABLE TO TRAFFIC FROM POINTS IN AN ADJACENT FOREIGN COUNTRY TO POINTS IN THE UNITED STATES.

**2006. Limited-liability provisions of Section 20 of the Act governing the transportation of live stock.**

- A. GENERAL APPLICATION OF LIMITED-LIABILITY PROVISIONS TO LIVE STOCK.
- B. SECTION 20 OF THE ACT SUPERSEDES THE COMMON-LAW RULE REGARDING LIABILITY OF THE CARRIER FOR NEGLIGENT DELAY IN THE TRANSPORTATION OF LIVE STOCK.
- C. LIABILITY OF CARRIER FOR LOSS OF LIVE STOCK TRANSPORTED TO A FAIR OR EXPOSITION FOR EXHIBITION THEREAT AT FULL TARIFF RATE AND RETURNED BY CARRIER FREE OF CHARGE.

- D. VALIDITY OF LIMITED-LIABILITY PROVISIONS IN RECEIPTS, BILLS OF LADING, AND CONTRACTS OF SHIPMENT IN INTERSTATE AND FOREIGN COMMERCE.
- E. VALIDITY OF LIMITED-LIABILITY PROVISIONS IN CLASSIFICATIONS AND TARIFFS OR RATE SCHEDULES.

**2007. Limited-liability provisions of Section 20 of the Act not applicable to the carriage of baggage.**

- A. BAGGAGE CARRIED ON PASSENGER TRAINS OR BOATS IS NOT GOVERNED BY THE LIMITED-LIABILITY PROVISIONS OF THE ACT.
- B. LIMITATION OF LIABILITY ON BAGGAGE MUST BE SHOWN IN PUBLISHED TARIFF FILED WITH THE INTERSTATE COMMERCE COMMISSION.
- C. EFFECT OF BAGGAGE-LIABILITY PROVISIONS OF A PUBLISHED TARIFF.
- D. RECEIPT OF CARRIER FOR BAGGAGE OF PASSENGER.
- E. MEASURE OF RIGHTS AND LIABILITIES OF PASSENGER AND CARRIER IN CASE OF LOSS OF BAGGAGE IN INTERSTATE TRANSPORTATION.
- F. A PASSENGER IS BOUND BY TARIFF PROVISIONS LIMITING THE CARRIER'S LIABILITY FOR LOSS OR DAMAGE TO BAGGAGE IN INTERSTATE TRANSPORTATION.

**2008. Limitation of common carrier's liability in the transportation of perishable traffic.**

- A. NATURE AND EXTENT OF PROTECTIVE SERVICES IN THE TRANSPORTATION OF PERISHABLE TRAFFIC.
- B. RELATIVE LIABILITY OF CARRIER FOR LOSS OR DAMAGE TO PERISHABLE TRAFFIC MOVING UNDER "CARRIER'S PROTECTIVE SERVICE," AND "SHIPPER'S PROTECTIVE SERVICE."
- C. EXEMPTION OF CARRIER FROM DAMAGE TO LESS-THAN-CARLOAD SHIPMENTS OF PERISHABLE TRAFFIC WHERE THE TONNAGE IS INSUFFICIENT TO JUSTIFY THE MAINTENANCE OF PROTECTIVE SERVICES.
- D. INVALIDITY OF TARIFF PROVISION SEEKING TO LIMIT CARRIER'S LIABILITY ON PERISHABLE TRAFFIC TRANSPORTED IN VENTILATED CARS WHICH HAVE BEEN IMPROVISED FROM OTHER EQUIPMENT.
- E. VALIDITY OF LIMITED-LIABILITY PROVISIONS IN RECEIPTS, BILLS OF LADING, AND CONTRACTS OF SHIPMENT IN INTERSTATE AND FOREIGN COMMERCE.
- F. VALIDITY OF LIMITED-LIABILITY PROVISIONS IN CLASSIFICATIONS AND TARIFFS OR RATE SCHEDULES.

**2009. Limitation of vessel owner's liability in foreign commerce.**

- A. ISSUANCE OF THROUGH BILL OF LADING WHEN SPACE ON A VESSEL IS RESERVED.
- B. BILL OF LADING COVERING EXPORT TRAFFIC TO CONTAIN SEPARATE STATEMENT OF CHARGES FOR RAIL AND WATER TRANSPORTATION.



- C. RAIL CARRIER NOT LIABLE FOR EXPORT SHIPMENT AFTER DELIVERY TO VESSEL UNDER UNITED STATES REGISTRY.
- D. PROTECTION OF LIMITED LIABILITY FOR WATER CARRIERS IN RULE TO BE PRESCRIBED BY THE INTERSTATE COMMERCE COMMISSION.
- E. DUTY OF RAILROAD TO DELIVER EXPORT SHIPMENT TO VESSEL.
- F. ISSUANCE OF THROUGH EXPORT BILL OF LADING NOT ARRANGEMENT FOR CONTINUOUS CARRIAGE OR SHIPMENT.
- G. CARRIER NOT LIABLE UNDER AN ULTRA VIRES CONTRACT.
- H. CLAUSES IN VESSEL OWNER'S BILLS OF LADING RELIEVING FROM LIABILITY FOR NEGLIGENCE IN LOADING, DELIVERY, ETC., OF FOREIGN COMMERCE, PROHIBITED.
- I. COVENANTS IN VESSEL SHIPPING DOCUMENT AVOIDING EXERCISE OF DUE DILIGENCE IN EQUIPPING VESSEL, PROHIBITED.
- J. VESSEL OWNER NOT LIABLE FOR PERILS OF THE SEA, ACT OF GOD, PUBLIC ENEMY, OR INHERENT VICE OR NATURE OF THE GOODS.
- K. DUTY OF SHIP OWNER TO ISSUE BILL OF LADING STATING NATURE AND CONTENTS OF SHIPMENT.
- L. PENALTY FOR VIOLATION OF THE PROVISIONS OF THE "HARTER ACT."
- M. EXISTING LAWS NOT REPEALED.
- N. CERTAIN SECTIONS OF "HARTER ACT" INAPPLICABLE TO TRANSPORTATION OF LIVE STOCK.

#### 2010. Liability of connecting carriers under Section 20 of the Act.

- A. LIABILITY OF CONNECTING CARRIERS IN GENERAL.
- B. LIABILITY OF CONNECTING CARRIER MEASURED BY ORIGINAL CONTRACT OF SHIPMENT.
- C. CONTRACT OF INITIAL CARRIER INURES TO THE BENEFIT OF SUCCEEDING CARRIERS.
- D. LIABILITY OF CONNECTING CARRIERS FOR LOSS, DAMAGE OR INJURY TO PROPERTY TRANSPORTED IS SAME AS THAT OF INITIAL CARRIER.
- E. LIABILITY OF INTERMEDIATE CARRIER FOR LOSS, DAMAGE OR DELAY NOT OCCURRING ON ITS OWN LINE.
- F. CONNECTING CARRIER CANNOT MODIFY THE TERMS OF THE SHIPPING CONTRACT.
- G. SHIPPER CANNOT SUE A CONNECTING CARRIER TO RESTRAIN RECOVERY OF FREIGHT CHARGES TO ENFORCE A SET-OFF.

#### 2011. Liability of the terminal carrier under Section 20 of the Act.

- A. LIABILITY OF THE TERMINAL CARRIER AS AN INSURER.
- B. LIABILITY OF TERMINAL CARRIER FOR ITS OWN WRONG.
- C. LIABILITY OF TERMINAL CARRIER AS WAREHOUSEMAN.
- D. TERMINAL CARRIER IS BOUND BY THE CONTRACT OF THE INITIAL CARRIER.
- E. A RAILROAD HOLDING A CARLOAD SHIPMENT AS WAREHOUSEMAN BECOMES LIABLE AS A COMMON CARRIER ON RECEIPT OF FORWARDING ORDER.

2012. Common carriers and transportation not subject to the provisions of Section 20 of the Act.

2013. Rates dependent upon a declared or released valuation, as authorized or required by the Interstate Commerce Commission.

- A. PROVISION OF THE STATUTE.
- B. LEGALITY OF RELEASED RATES PRIOR TO THE "CUMMINS AMENDMENT" OF AUGUST 9, 1916.
- C. POWER OF INTERSTATE COMMERCE COMMISSION TO AUTHORIZE OR REQUIRE RATES DEPENDENT UPON A DECLARED OR RELEASED VALUATION.
- D. APPLICATIONS TO INTERSTATE COMMERCE COMMISSION FOR THE ESTABLISHMENT OF RELEASED AND DECLARED VALUATION RATES.
- E. TARIFF SCHEDULES CONTAINING DECLARED OR RELEASED-VALUATION RATES MUST REFER TO THE ORDER OF THE INTERSTATE COMMERCE COMMISSION AUTHORIZING THE SAME.
- F. SHIPPER CHARGED WITH KNOWLEDGE OF THE EXISTENCE OF TWO RATES, ONE BASED UPON RELEASED VALUATION.
- G. EFFECT OF DECLARATION OR AGREEMENT AS TO VALUE.
- H. WHERE THE SHIPPER HAS THE CHOICE OF TWO RATES, HE IS ESTOPPED FROM DENYING THE VALIDITY OF THE LIMITED-LIABILITY CONTRACT ENTERED INTO IN GOOD FAITH BY BOTH SHIPPER AND CARRIER.
- I. RIGHT OF CARRIER TO RELY UPON THE STATEMENTS OF THE SHIPPER OR FORWARDER.
- J. WHERE BUT ONE RATE CARRYING A LIMITED-LIABILITY PROVISION IS ACCORDED, THE CONTRACT IS INVALID.
- K. REASONABLENESS OF LIMITED-LIABILITY PROVISIONS IN THE CONTRACT IN THE ABSENCE OF PUBLISHED SCHEDULE OF RATES.
- L. UNREASONABLENESS OF TARIFF PROVISIONS GOVERNING RELEASED OR DECLARED VALUATION RATES.
- M. A CARRIER MAY NOT BY CONTRACT CHANGE ITS OBLIGATION AS A COMMON CARRIER INTO THAT OF A FORWARDER ONLY.
- N. LIVE STOCK RATES DEPENDENT UPON DECLARED VALUE.
- O. EXPRESS RATES DEPENDENT UPON DECLARED OR RELEASED VALUATION.

2014. Liability of the initial carrier for the full actual loss, damage, or injury to the property transported, notwithstanding any limitation of liability, or limitation of the amount of recovery, or representation or agreement as to value.

- A. PROVISIONS OF THE STATUTE.
- B. INVALIDITY OF A CONTRACT PROVISION THAT IN CASE OF LOSS OF GOODS THE LIABILITY OF THE CARRIER SHALL BE COMPUTED ON THE VALUE OF THE PROPERTY AT THE TIME AND PLACE OF SHIPMENT.



- C. EFFECT OF STIPULATION IN THE BILL OF LADING THAT THE AMOUNT OF LOSS OR DAMAGE SHALL BE COMPUTED ON BASIS OF VALUE OF PROPERTY AT TIME AND PLACE OF SHIPMENT, WHERE THE PREVAILING MARKET PRICE AT DESTINATION IS LOWER.
- D. ALLOWANCE OF ATTORNEYS' FEES IS UNAUTHORIZED IN SUITS UNDER SECTION 20 OF THE ACT.
- E. RESUMÉ OF SHIPPER'S MEASURE OF RECOVERY FOR LOSS, DAMAGE, OR INJURY TO PROPERTY TRANSPORTED IN INTERSTATE COMMERCE.
- F. REPLACEMENT VALUE OF PROPERTY DESTROYED IN TRANSIT AS MEASURE OF RECOVERY.

**2015. Liability of the initial carrier for damages sustained by reason of delay to property transported in interstate and foreign commerce.**

- A. DUTY OF THE CARRIER TO TRANSPORT PROPERTY WITH REASONABLE DISPATCH.
- B. LIABILITY OF CARRIER FOR UNREASONABLE DELAY IN THE TRANSPORTATION OF PROPERTY.
- C. LIABILITY OF INITIAL CARRIER FOR DAMAGES FOR THE LOSS OF THE MARKET CAUSED BY UNREASONABLE DELAY IN TRANSPORTATION.
- D. AN ACTION FOR NEGLIGENT DELAY OF AN INTERSTATE SHIPMENT GOVERNED BY FEDERAL LAWS.
- E. RECOVERY OF PAID FREIGHT CHARGES AS A PART OF THE DAMAGES CAUSED BY THE DELAY IN TRANSPORTING AN INTERSTATE SHIPMENT.
- F. INSTRUCTIONS TO JURY IN ACTIONS FOR DAMAGES ACCOUNT DELAY TO INTERSTATE SHIPMENTS.
- G. DAMAGES FOR MENTAL SUFFERING ONLY, NOT RECOVERABLE.
- H. CONSTRUCTION OF STATE STATUTES MODELED ON THE INTERSTATE COMMERCE ACT.

**2016. Validity of limited-liability provisions in receipts, bills of lading, and contracts of shipment in interstate and foreign commerce.**

- A. RECEIVING CARRIER REQUIRED TO ISSUE A RECEIPT OR BILL OF LADING COVERING A SHIPMENT IN INTERSTATE OR FOREIGN COMMERCE.
- B. NATURE AND FUNCTIONS OF THE BILL OF LADING.
- C. BILL OF LADING GOVERNS THE THROUGH TRANSPORTATION.
- D. PROVISIONS OF THE BILL OF LADING ARE AVAILABLE TO ALL CARRIERS IN THE THROUGH ROUTE.
- E. FAILURE OF INITIAL CARRIER TO ISSUE A RECEIPT OR BILL OF LADING FOR GOODS SHIPPED IN INTERSTATE COMMERCE DOES NOT EXEMPT IT FROM THE LIABILITY IMPOSED BY SECTION 20 OF THE ACT.
- F. PROVISIONS OF THE CARRIER'S BILL OF LADING IN FORCE AT TIME OF SHIPMENT GOVERN IN THE ABSENCE OF THE ISSUANCE OF SAME TO THE SHIPPER.

- G. BILL OF LADING PROVISION REQUIRING SURRENDER OF THAT DOCUMENT BEFORE DELIVERY OF THE SHIPMENT.
- H. PROVISIONS RELATING TO RECEIPT AND DELIVERY OF PROPERTY FROM AND TO PRIVATE AND OTHER SIDINGS.
- I. INTERSTATE COMMERCE ACT IMPOSES UNIFORMITY OF OPERATION IN CONTRACTS FOR INTERSTATE TRANSPORTATION.
- J. CONTRACTS FOR INTERSTATE TRANSPORTATION TO BE STRICTLY CONSTRUED WITH REFERENCE TO THE INTERSTATE COMMERCE ACT.
- K. LIMITED-LIABILITY PROVISIONS OF CONTRACTS OF SHIPMENT IN INTERSTATE AND FOREIGN COMMERCE IN VIOLATION OF SECTION 20 OF THE ACT, UNLAWFUL AND VOID.
- L. PROHIBITIONS OF SECTION 20 OF THE ACT GOVERNING LIMITED-LIABILITY CLAUSES IN BILLS OF LADING, NOT APPLICABLE TO INTRASTATE TRAFFIC.
- M. THE INCLUSION IN A SHIPPING CONTRACT OF AN EXEMPTION-OF-LIABILITY CLAUSE, VOID UNDER SECTION 20 OF THE ACT, DOES NOT VITIATE THE ENTIRE CONTRACT.
- N. A PREPAID RATE DOES NOT CONTROL A VALID LIABILITY PROVISION IN THE CONTRACT.
- O. EFFECT OF MAXIMUM AMOUNT OF RECOVERY STIPULATED IN CONTRACT OF SHIPMENT.
- P. BILLS OF LADING COVERING EXPORT TRAFFIC TO CONTAIN SEPARATE STATEMENT OF CHARGES FOR THE RAIL AND WATER TRANSPORTATION.
- Q. APPLICATION OF LIMITED-LIABILITY PROVISIONS OF A BILL OF LADING IN A CASE NOT GOVERNED BY SECTION 20 OF THE ACT.
- R. INVALIDITY OF SPECIAL AGREEMENT IN CONTRAVENTION OF THE PUBLISHED TARIFF REGULATIONS LIMITING THE CARRIER'S LIABILITY TO THAT OF A WAREHOUSEMAN DURING THE FREE-TIME PERIOD FOR DELIVERY.
- S. LOSS OF GOODS WHILE IN THE CARRIER'S WAREHOUSE AT AN INTERMEDIATE POINT.
- T. MISSTATEMENT BY THE SHIPPER OF THE VALUE OF THE PROPERTY TRANSPORTED.
- U. SIGNATURE OF SHIPPER TO THE RELEASED-VALUATION CLAUSE IN A BILL OF LADING.
- V. ADMINISTRATIVE POWER OF THE INTERSTATE COMMERCE COMMISSION OVER STIPULATIONS IN CARRIERS' BILLS OF LADING AFFECTING LIABILITY.
- W. FORMS OF UNIFORM BILLS OF LADING PRESCRIBED BY THE INTERSTATE COMMERCE COMMISSION FOR USE IN INTERSTATE AND FOREIGN COMMERCE.
- X. FORM OF UNIFORM EXPRESS RECEIPT PRESCRIBED BY THE INTERSTATE COMMERCE COMMISSION FOR USE IN INTERSTATE AND FOREIGN COMMERCE.
- Y. FORM OF UNIFORM LIVE STOCK CONTRACT PRESCRIBED BY THE INTERSTATE COMMERCE COMMISSION FOR USE IN INTERSTATE AND FOREIGN COMMERCE.



- Z. LEGAL STATUS OF FORMS OF CARRIERS' BILLS OF LADING AND CONTRACTS OF SHIPMENT PROMULGATED IN THE CONSOLIDATED FREIGHT CLASSIFICATION.
- AA. "SHIPPER'S WEIGHT, LOAD, AND COUNT" PROVISION, ENDORSED ON BILL OF LADING.
- BB. ACT OF GOD, OR OTHER VIS MAJOR.
- CC. ACCIDENTS OR DELAYS FROM UNAVOIDABLE CAUSES.
- DD. PROVISIONS LIMITING AND EXEMPTING CARRIERS FROM LIABILITY FOR NEGLIGENCE.
- EE. TIME FOR GIVING NOTICE OF AND FILING OF CLAIMS WITH CARRIERS, AND FOR INSTITUTION OF SUITS FOR RECOVERY OF DAMAGES UNDER SECTION 20 OF THE ACT.
- FF. VALIDITY OF LIMITED-LIABILITY PROVISIONS IN CLASSIFICATIONS AND TARIFFS OR RATE SCHEDULES.
- GG. LIMITATION OF LIABILITY OF CARRIER ON TRAFFIC DESTINED TO OR TAKEN FROM A NON-AGENCY STATION.

**2017. Validity of limited-liability provisions in classifications and tariffs or rate schedules.**

- A. LIMITED-LIABILITY PROVISIONS OF TARIFFS OR RATE SCHEDULES IN VIOLATION OF SECTION 20 OF THE ACT, UNLAWFUL AND VOID.
- B. TARIFFS CONTAINING RATES DEPENDENT UPON DECLARED VALUE MAY BE AUTHORIZED OR REQUIRED BY THE INTERSTATE COMMERCE COMMISSION.
- C. TARIFFS CONTAINING RELEASED-VALUATION RATES TO SHOW THE ORDER OF THE INTERSTATE COMMERCE COMMISSION.
- D. EFFECT OF FAILURE TO POST TARIFF ON VALIDITY OF LIMITED-LIABILITY PROVISION.
- E. VALIDITY OF TARIFF RULES DENYING PRIVILEGE OF INSPECTION TO THE CONSIGNEE.
- F. LIMITED-LIABILITY PROVISIONS OF CARRIERS' CONSOLIDATED FREIGHT CLASSIFICATION.
- G. DEDUCTIONS FOR NATURAL SHRINKAGE AND UNAVOIDABLE WASTE ON SHIPMENTS OF GRAIN.
- H. "FILL" ALLOWANCES DEDUCTED FROM THE HOOFF-SELLING WEIGHTS OF LIVE STOCK AS BASES FOR ASSESSMENT OF TRANSPORTATION CHARGES.
- I. TOLERANCE PROVISIONS IN PUBLISHED TARIFFS GOVERNING SHIPMENTS OF COAL.
- J. RULES OF CARRIER, UNAUTHORIZED BY ITS TARIFFS, WHEREUNDER SHIPMENTS ARE REFUSED UNLESS THE DECLARED VALUE THEREOF IS MARKED ON THE PACKAGE BY THE SHIPPER, UNLAWFUL.
- K. VALIDITY OF LIMITED-LIABILITY PROVISIONS IN RECEIPTS, BILLS OF LADING, AND CONTRACTS OF SHIPMENT IN INTERSTATE AND FOREIGN COMMERCE.

**2018. Constitutionality of provisions of Section 20 of the Act governing the initial carrier's liability, and limitation of carrier's liability for loss, damage, or injury to property transported in interstate and foreign commerce.**

- A. CONSTITUTIONALITY OF STATUTE MAKING THE INITIAL CARRIER LIABLE FOR LOSS, DAMAGE, OR INJURY TO PROPERTY OCCURRING ON THE LINES OF CONNECTING CARRIERS.
- B. CONSTITUTIONALITY OF PROVISIONS OF SECTION 20 OF THE ACT FORBIDDING EXEMPTION OF LIABILITY BY CONTRACT, RECEIPT OR OTHER DOCUMENT.
- C. CONSTITUTIONALITY OF THE STATUTE PERMITTING RECOUPMENT BY THE INITIAL CARRIER AGAINST THE CARRIER RESPONSIBLE FOR THE LOSS, DAMAGE, OR INJURY TO PROPERTY TRANSPORTED.
- D. "CARMACK AMENDMENT" OF SECTION 20 OF THE ACT COVERING INITIAL CARRIER'S LIABILITY DOES NOT INFRINGE THE CARRIER'S CONSTITUTIONAL RIGHT TO CONTRACT WITH THE CONNECTING CARRIER FOR THE THROUGH ROUTE.
- E. CONSTITUTIONALITY OF STATE STATUTES REGULATING LIABILITY OF CONNECTING CARRIERS ON INTRASTATE TRAFFIC.

**2019. Time for giving notice of and filing of claims with carriers, and for the institution of suits for recovery of damages under Section 20 of the Act.**

- A. NINETY DAYS, MINIMUM LIMITATION FOR THE GIVING OF NOTICE OF CLAIMS.
- B. VALIDITY OF NOTICE TO AN OFFICER OR STATION AGENT OF THE TERMINAL CARRIER.
- C. ORAL NOTICE NOT VALID WHERE WRITTEN NOTICE REQUIRED BY CONTRACT.
- D. NOTICE TO CONNECTING CARRIER IS NOTICE TO THE INITIAL CARRIER.
- E. BURDEN OF PROVING THE GIVING OF WRITTEN NOTICE UPON SHIPPER.
- F. NOTICE NEED NOT BE GIVEN TO CONNECTING CARRIERS.
- G. THE EFFECT OF FAILURE TO GIVE NOTICE IS EXCLUSIVELY A FEDERAL QUESTION.
- H. FOUR MONTHS, MINIMUM LIMITATION FOR THE FILING OF CLAIMS WITH CARRIERS.
- I. TWO YEARS, LIMITATION FOR INSTITUTION OF SUITS FOR RECOVERY OF DAMAGES.
- J. PERIOD OF FEDERAL CONTROL EXCLUDED IN DETERMINING LIMITATION OF ACTIONS.
- K. CIRCUMSTANCES UNDER WHICH NOTICE OF CLAIM OR FILING OF CLAIM NOT REQUIRED AS CONDITIONS PRECEDENT TO RECOVERY.
- L. CARRIER CANNOT WAIVE THE TIME-LIMIT PROVISION OF A BILL OF LADING GOVERNING THE FILING OF CLAIM.
- M. WHEN THE "FILING" OF A CLAIM WITH A CARRIER IS COMPLETE.



- N. CONNECTING CARRIER CANNOT BE PREVENTED BY ESTOPPEL OR OTHERWISE FROM RELYING UPON A PROVISION OF THE BILL OF LADING THAT SUIT MUST BE BROUGHT WITHIN A SPECIFIED TIME.
- O. FILING OF CLAIM BY THE SHIPPER WITH CONNECTING CARRIER NOT REQUIRED, EVEN THOUGH A MODIFIED BILL OF LADING IS ISSUED BY THE CONNECTING CARRIER AND THE LOSS OCCURRED ON THE LINE OF THE CONNECTING CARRIER.

**2020. Jurisdiction of the Interstate Commerce Commission under Section 20 of the Act.**

- A. INTERSTATE COMMERCE COMMISSION POSSESSES NO JURISDICTION OVER ACTIONS FOR DAMAGES SOUNDING IN TORT.
- B. ADMINISTRATIVE POWER OF THE INTERSTATE COMMERCE COMMISSION OVER STIPULATIONS IN CARRIERS' BILLS OF LADING AFFECTING LIABILITY.
- C. POWER OF INTERSTATE COMMERCE COMMISSION TO AUTHORIZE OR REQUIRE RATES DEPENDENT UPON A DECLARED OR RELEASED VALUATION.

**2021. Penalties and forfeitures—Criminal proceedings.**

- A. FILING OF FRAUDULENT CLAIMS AGAINST CARRIERS.
- B. MISSTATEMENT BY SHIPPER OF TRUE VALUE OF PROPERTY.

**2022. Rights existing under the law at the time of passage of initial-carrier's-liability clause, preserved.**

- A. PROVISIONS OF THE STATUTE.
- B. EFFECT OF PROVISIO.
- C. MEANING OF THE PHRASE "EXISTING LAW."
- D. SECTION 20 OF THE ACT NOT RETROACTIVE.
- E. RIGHT OF CARRIER TO SELL UNCLAIMED GOODS FOR ACCRUED CHARGES NOT AFFECTED BY SECTION 20 OF THE ACT.

**2023. Jurisdiction and venue of actions under Section 20 of the Act.**

- A. JURISDICTION OF STATE COURTS OVER ACTIONS UNDER SECTION 20 OF THE ACT.
- B. REMOVAL OF CAUSES UNDER SECTION 20 OF THE ACT FROM STATE COURTS TO UNITED STATES COURTS.
- C. COURTS WILL TAKE JUDICIAL NOTICE OF THE EXISTENCE OF SECTION 20 OF THE INTERSTATE COMMERCE ACT.

**2024. Conditions precedent to recovery in actions under Section 20 of the Act.**

**2025. Writ and process in actions under Section 20 of the Act.**

**2026. Parties in suits under Section 20 of the Act.**

- A. STATUTORY LIABILITY OF THE INITIAL CARRIER FOR LOSS, DAMAGE, OF INJURY TO PROPERTY TRANSPORTED IN INTERSTATE COMMERCE AND TO ADJACENT FOREIGN COUNTRIES.

- B. RIGHT OF SHIPPER TO PROCEED AGAINST NEGLIGENT CONNECTING CARRIER.
- C. JOINING CONNECTING CARRIERS IN SUIT AS CO-DEFENDANTS DOES NOT RELIEVE THE INITIAL CARRIER.
- D. RIGHT OF CONSIGNORS, AS HOLDERS OF ORDER BILLS OF LADING, TO SUE FOR DAMAGES UNDER SECTION 20 OF THE INTERSTATE COMMERCE ACT.

**2027. Pleadings in suits under Section 20 of the Act.**

- A. PLEA BY INITIAL CARRIER THAT IT TRANSPORTED THE GOODS WITH REASONABLE DILIGENCE IS BAD ON DEMURRER.
- B. EFFECT OF FAILURE OF PLAINTIFF TO JOIN CONNECTING CARRIERS AS CO-DEFENDANTS.
- C. EFFECT OF SURRENDER OF BILL OF LADING ON THE RIGHT OF THE SHIPPER TO SUE.
- D. RIGHT OF INITIAL CARRIER TO FILE CROSS-PETITION AGAINST THE RESPONSIBLE CONNECTING CARRIER.
- E. DEFENSE OF INITIAL CARRIER IN ACTIONS AGAINST IT UNDER SECTION 20 OF THE ACT.

**2028. Evidence in suits under Section 20 of the Act.**

- A. EVIDENCE OF ACTS OF CONNECTING CARRIERS IN A SUIT AGAINST INITIAL CARRIER.
- B. ADMISSIBILITY OF RATE SCHEDULES ON FILE WITH THE INTERSTATE COMMERCE COMMISSION.
- C. EVIDENCE OF DECISION IN A FORMER SUIT.
- D. AGREEMENT OF CARRIER TO REIMBURSE SHIPPER FOR LOSS, NOT DISCRIMINATORY.
- E. ADMISSIBILITY OF REPARATION AWARD OF INTERSTATE COMMERCE COMMISSION.
- F. CONCLUSIVENESS OF SHIPPER'S SIGNED BILL OF LADING.
- G. PRESUMPTION OF LAWFUL CONDUCT OF CARRIER.

**2029. Burden of proof in suits under Section 20 of the Act.**

- A. SHIPPER NOT OBLIGED TO PROVE UPON WHAT LINE THE LOSS OR DAMAGE OCCURRED.
- B. PROOF NECESSARY IN AN ACTION AGAINST THE INITIAL CARRIER FOR DELAY TO GOODS.
- C. PROOF OF DELIVERY OF AN INTERSTATE SHIPMENT TO THE INITIAL CARRIER AND FAILURE TO DELIVER THE SAME TO THE CONSIGNEE RAISES A PRESUMPTION OF NEGLIGENCE.
- D. PROOF OF FILING TARIFFS CONTAINING A CHOICE OF RATES.
- E. BURDEN OF PROOF ON CARRIER TO PROVE SHIPPER'S RELEASED VALUATION.
- F. BURDEN OF PROOF ON CARRIER TO PROVE VALIDITY OF BILL OF LADING.
- G. WHEN QUESTION OF BURDEN OF PROOF BECOMES AN ACADEMIC ONE.



**2030. Trial of actions under Section 20 of the Act.****2031. Elements and measure of damages in suits under Section 20 of the Act.**

- A. RESUMÉ OF SHIPPER'S MEASURE OF RECOVERY FOR LOSS, DAMAGE, OR INJURY TO PROPERTY TRANSPORTED IN INTERSTATE COMMERCE.
- B. RIGHT OF SHIPPER TO RECOVER INTEREST ON CLAIMS INVOLVING LOSS, DAMAGE, OR INJURY TO PROPERTY TRANSPORTED IN INTERSTATE COMMERCE.
- C. RIGHT OF PLAINTIFF TO RECOVER COSTS AND DISBURSEMENTS IN A SUIT AGAINST DEFENDANT CARRIER INVOLVING LOSS, DAMAGE, OR INJURY TO PROPERTY IN INTERSTATE COMMERCE.
- D. LIABILITY OF CARRIER TO REFUND FREIGHT CHARGES PAID BY THE SHIPPER ON A SHIPMENT THAT IS LOST, DAMAGED, OR INJURED IN TRANSIT.
- E. ALLOWANCE OF ATTORNEYS' FEES IS UNAUTHORIZED IN SUITS UNDER SECTION 20 OF THE ACT.
- F. MEANING OF THE TERM "LAWFUL HOLDER" OF THE BILL OF LADING.

**2032. Appeal and error in suits under Section 20 of the Act.**

- A. ERROR TO STATE COURT INVOLVING RIGHTS ASSERTED UNDER FEDERAL STATUTES.
- B. REVIEW OF INSTRUCTION OF STATE COURT INVOLVING MEANING OF WORDS "LAWFUL HOLDER" IN SECTION 20 OF THE ACT.
- C. CONSTRUCTION OF AN INTERSTATE BILL OF LADING.
- D. THE FEDERAL RIGHT IS NOT REQUIRED TO BE PLEADED IN ANY SPECIAL OR PARTICULAR FORM.
- E. FEDERAL QUESTION WHEN RAISED TOO LATE.
- F. REVIEW OF HARMLESS ERROR.
- G. ERROR INVOLVING DECISION OF STATE COURT ON NON-FEDERAL GROUND.
- H. WHEN FINDING INVOLVING QUESTIONS OF FACT CONCLUSIVE ON UNITED STATES SUPREME COURT.
- I. PRINTING USELESS MATTER IN THE RECORD.
- J. FRIVOLOUS FEDERAL QUESTION.
- K. TRIAL DE NOVO IN APPEAL IN ADMIRALTY.

**2033. Rights and liabilities of carriers inter sese.**

- A. RECOURSE OF INITIAL CARRIER UPON THE CARRIER RESPONSIBLE FOR THE LOSS, DAMAGE, OR INJURY TO PROPERTY.
- B. PURPOSE OF THE STATUTE MAKING INITIAL CARRIER LIABLE.
- C. CONSTITUTIONALITY OF THE STATUTE PERMITTING RECOUPMENT BY THE INITIAL CARRIER AGAINST THE CARRIER RESPONSIBLE FOR THE LOSS, DAMAGE, OR INJURY TO PROPERTY TRANSPORTED.

- D. DISMISSAL OF SUIT AGAINST CONNECTING CARRIER, AS A CO-DEFENDANT, DOES NOT AFFECT LIABILITY OF INITIAL CARRIER.
  - E. INITIAL CARRIER CAN ONLY RECOVER FROM CONNECTING CARRIER UPON PROOF OF ITS LIABILITY.
  - F. INITIAL CARRIER CANNOT BE DENIED ITS RIGHT OF RECOUPMENT AGAINST RESPONSIBLE CARRIER BY REASON OF AN INDEMNITY AGREEMENT WITH SHIPPER.
  - G. LIABILITY OF INITIAL CARRIER UNDER BILL OF LADING CANNOT BE AMPLIFIED BY ACT OF A CONNECTING CARRIER.
  - H. RESPONSIBILITY OF EACH CARRIER LIMITED TO THE DAMAGE CAUSED BY IT.
  - I. CONNECTING CARRIERS ENTITLED TO ALL BENEFITS UNDER A SHIPPER'S CONTRACT WITH THE INITIAL CARRIER.
2034. Limitation of liability of telegraph, telephone, cable, and radio-telegraph companies in the transmission of messages.
2035. Liability provisions of Section 20 of the Act inapplicable to the transportation of persons.
2036. Bills of lading and contracts of shipment.
2037. Damages and reparation—Claims between shippers and carriers.
2038. Civil proceedings in the courts.



**2000. Common-law liability of common carriers for loss, damage, or injury to property transported, as administered by the United States Courts.**

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**2000-A. GENERAL SURVEY OF THE SUBJECT OF THE LIABILITY OF COMMON CARRIERS UNDER THE COMMON LAW.**

“In the celebrated case of *Coggs v. Bernard*, 2 Lord Raymond, 909; 1 Smith’s Leading Cases, 369, Lord Holt, in quaint language, states the common-law liability of carriers as of that time to be that if ‘a delivery to carry or otherwise manage, \* \* \*’ is made ‘to one that exercises a public employment, \* \* \* and he is to have a reward, he is bound to answer for the goods at all events. \* \* \* The law charges this person thus intrusted to carry goods, against all events, but acts of God, and of the enemies of the King. For though the force be never so great, as if an irresistible multitude of people should rob him, nevertheless he is chargeable. And this is a politic establishment, contrived by the policy of the law, for the safety of all persons, the necessity of whose affairs oblige them to trust these sorts of persons, that they may be safe in their ways of dealing; for else these carriers might have an opportunity of ondoing all persons that had any dealings with them, by combining with thieves, &c., and yet doing it in such a clandestine manner as would not be possible to be discovered. And this is the reason the law is founded upon in that point.’

“Under the common law as it has been developed to the present day in its application to modern transportation conditions and practices, there has been little or no relaxation of the rigor of the rule of the common carrier’s liability, but the exceptions have been extended to include loss, damage, and injury due to other causes, and a common carrier is now regarded as an insurer of the goods intrusted to its care and custody for transportation and as liable for all loss, damage, or injury occurring to the goods while they are held by it in its capacity of a common carrier, except when such loss, damage, or injury is caused by: (a) the act of God; (b) the public enemy; (c) the act of the shipper himself; (d) public authority; (e) or the inherent vice or nature of the goods. Generally a common carrier can not, under the common law, exempt itself from the consequences of its own negligence or willful act at any time or under any circumstances in the handling of goods and, therefore, even when loss is occasioned by or results from one of the excepted perils against which it is not otherwise held as an insurer, it will nevertheless be liable for any failure to use the degree of care that would have prevented or minimized losses resulting from the excepted causes. This liability of common carriers as insurers of the goods they transport is thus shown to inhere in the peculiar relationship existing between the carrier and the shipper.

“The increase in the amount of business done by carriers, the extension of their operations, and the increase in the value of personal property carried from place to place within the United Kingdom, made the degree of the carrier’s liability a matter of much concern to carriers in England and they began to contrive ways of diminishing it. In the effort to achieve this end it became the custom of carriers

to post notices in public places to the effect that they would not assume liability in excess of specified values for goods unless the owner should pay a higher rate in consideration thereof. It was the theory that if such a notice were brought home to the shipper in such manner that he had knowledge of it, it thereby became a part of the contract of shipment and binding upon him.

"The English courts of law very early began to give official recognition to the rights claimed by common carriers to thus restrict their common-law liability and it was first held that even so lax a method as the publishing and posting in public places of notices to that intent and purpose would be sufficient to effect the limitation of the carrier's liability when such notices were brought home to the shipper.

"The custom, sanctioned by law, which thus grew up in England, was productive of so many evils that in 1854 the Parliament intervened and enacted the railway and canal traffic act. After the enactment of that statute common carriers in England could limit their common-law liability only by a contract with the shipper. In this country, however, the rule was early established that a limitation of the carrier's liability could be effected only by the establishment of a contractual relationship between the carrier and shipper and that a notice of limitation of liability such as was at one time recognized by the English courts was ineffectual and could not be relied upon as a defense in an action for recovery on account of loss or damage to the goods unless the shipper first had notice of the terms and assented to them. Once assented to by the shipper a contract was assumed to be created that would be binding upon him. The form of such an assent is now commonly secured by the giving and accepting of a written bill of lading, assent on the part of the shipper being presumed even though, as is unquestionably the fact, he seldom reads and is, perhaps, actually ignorant of the conditions.

"So, the law is now well settled, both in this country and in England, that a carrier may, unless forbidden by statute, limit or restrict, or even extend and enlarge, its common-law liability. Such contracts must, however, be invested with all the requirements of validity attaching to other forms of contract. Mutual assent and a valuable consideration must exist to support the assumption by the carrier of more than its common-law risks or, on the other hand, to support a restriction or limitation of those risks. A consideration for the latter is usually found in the agreement by the carrier to apply a lower or, as it is expressed in the governing freight classifications in effect in this country, 'reduced' rate; and this is a sufficient consideration."<sup>1</sup>

By the enactment of Section 20 of the Interstate Commerce Act, making the initial carrier liable for the full actual loss, damage, or injury to property transported in interstate commerce, Congress has so far occupied the field of regulation as to supersede all State action on the same subject.<sup>2</sup>

Inasmuch as State statutes and laws no longer possess controlling force in the matter of the liability of common carriers for the loss, damage, or injury to property transported in interstate commerce, and in view of the canon of judicial interpretation that State Courts are bound by the decisions of the United States Courts in all cases involv-



ing the construction of a Federal statute, *this work is limited to a discussion of the common-law liability of common carriers as that subject is administered in the United States Courts, both prior and subsequent to the enactment of Section 20 of the Interstate Commerce Act.*<sup>3</sup>

For an analysis and review of the decisions of the various State Courts on this subject, reference is herein made to the various authoritative works on the subject of common carrier's liability.<sup>4</sup>

1. In the Matter of Bills of Lading (1919), 52 I. C. C. Rep. 671, 679, et seq.
2. Charleston & W. C. Ry. Co. v. Varnville Furniture Co. (1915), 237 U. S. 597, 35 Sup. Ct. Rep. 715, 59 L. Ed. 1137.
3. On the question of the non-existence of a Federal common law as distinguished from that of the several States, the United States Supreme Court in *Smith v. Alabama* (1888), 124 U. S. 465, 8 Sup. Ct. Rep. 564, 31 L. Ed. 508, per Mr. Justice Matthews, stated: "The grant of power to Congress in the Constitution to regulate commerce with foreign nations and among the several States, it is conceded, is paramount over all legislative powers which, in consequence of not having been granted to Congress, are reserved to the States. It follows that any legislation of a State, although in pursuance of an acknowledged power reserved to it, which conflicts with the actual exercise of the power of Congress over the subject of commerce, must give way before the Supremacy of the national authority. As the regulation of commerce may consist in abstaining from prescribing positive rules for its conduct, it cannot always be said that power to regulate is dormant because not affirmatively exercised. And when it is manifest that Congress intends to leave that commerce, which is subject to its jurisdiction, free and unfettered by any positive regulations, such intentions would be contravened by state laws operating as regulations of commerce as much as though these had been expressly forbidden. In such cases, the existence of the power to regulate commerce in Congress has been construed to be not only paramount but exclusive, so as to withdraw the subject as the basis of legislation altogether from the States.

"There are many cases, however, where the acknowledged powers of a State may be exerted and applied in such a manner as to affect foreign or interstate commerce without being intended to operate as commercial regulations. If their operation and application in such cases regulate such commerce, so as to conflict with the regulation of the same subject by Congress, either as expressed in positive laws or implied from the absence of legislation, such legislation on the part of the State, to the extent of that conflict, must be regarded as annulled. To draw the line of interference between the two fields of jurisdiction, and to define and declare the instances of unconstitutional encroachment, is a judicial question often of much difficulty, the solution of which, perhaps, is not to be found in any single and exact rule of decision. Some general lines of discrimination, however, have been drawn in varied and numerous decisions of this court. It has been uniformly held, for example, that the States cannot by legislation place burdens upon commerce with foreign Nations or among the several States. 'But upon an examination of the cases in which they were rendered,' as was said in *Sherlock v. Alling*, 93 U. S. 99, 102 (23:819, 820), 'it will be found that the legislation adjudged invalid imposed a tax upon some instrument or subject of commerce, or exacted a license fee from parties engaged in commercial pursuits, or created an impediment to the free navigation of some public waters, or prescribed conditions in accordance with which commerce in particular articles or between particular places was required to be conducted. In all the cases the legislation condemned operated directly upon commerce, either by way of tax upon its business, license upon its pursuit in particular channels, or conditions for carrying it on'. In that case it was held that a Statute of Indiana, giving a right of action to the personal representatives of the deceased where his death was caused by the wrongful act or omission of another, was applicable in the case of a loss of life, occasioned by a collision between steamboats navigating the Ohio River engaged in interstate commerce, and did not amount to a regulation of commerce in violation of the Constitution of the United States. On this point the court said, p. 103 (820): 'General legislation of this kind, prescribing the liabilities or duties of citizens of a State, without distinction as to pursuit or calling, is not open to any valid objection because it may affect persons engaged in foreign or interstate commerce. Objection might, with equal propriety, be urged against legislation prescribing the form in which contracts shall be authenticated, or property descend or be distributed on the death of its owner, because applicable to the contracts or estates of persons engaged in such commerce. In conferring upon Congress the regulation of commerce, it was never intended to cut the States off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution. \* \* \* And it may be said, generally, that the legislation of a State, not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any

other pursuit.' In that case, it was admitted, in the opinion of the court, that Congress might legislate, under the power to regulate commerce, touching the liability of parties for marine torts resulting in the death of the persons injured, but that, in the absence of such legislation by Congress, the statute of the State, giving such right of action, constituted no encroachment upon the commercial power of Congress, although, as was also said, p. 103 (820), 'It is true that the commercial power conferred by the Constitution is one without limitation. It authorizes legislation with respect to all the subjects of foreign and interstate commerce, the persons engaged in it, and the instruments by which it is carried on.'

"The Statute of Indiana held to be valid in that case was an addition to and an amendment of the general body of the law previously existing and in force, regulating the relative rights and duties of persons within the jurisdiction of the State, and operating upon them, even when engaged in the business of interstate commerce. This general system of law, subject to be modified by state legislation, whether consisting in that customary law which prevails as the common law of the land in each State, or as a code of positive provisions expressly enacted, is nevertheless the law of the State in which it is administered, and derives all its force and effect from the actual or presumed exercise of its legislative power. It does not emanate from the authority of the national government, nor flow from the exercise of any legislative powers conferred upon Congress by the Constitution of the United States; nor can it be implied as existing by force of any other legislative authority than that of the several States in which it is enforced. It has never been doubted but that this entire body and system of law, regulating in general the relative rights and duties of persons within the territorial jurisdiction of the State, without regard to their pursuits, is subject to change at the will of the Legislature of each State, except as that will may be restrained by the Constitution of the United States. It is to this law that persons within the scope of its operation look for the definition of their rights and for the redress of wrongs committed upon them. It is the source of all those relative obligations and duties enforceable by law, the observance of which the State undertakes to enforce as its public policy. And it was in contemplation of the continued existence of this separate system of law in each State that the Constitution of the United States was framed and ordained with such legislative powers as are therein granted expressly or by reasonable implication.

"It is among these laws of the States, therefore, that we find provisions concerning the rights and duties of common carriers of persons and merchandise, whether by land or by water, and the means authorized by which injuries resulting from the failure properly to perform their obligations may be either prevented or redressed. A carrier exercising his calling within a particular State, although engaged in the business of interstate commerce, is answerable according to the laws of the State for acts of nonfeasance or misfeasance committed within its limits. If he fails to deliver goods to the proper consignee at the right time or place, he is liable in an action for damages under the laws of the State in its courts; or if by negligence in transportation he inflicts injury upon the person of a passenger brought from another State, a right of action for the consequent damage is given by the local law. In neither case would it be a defense that the law giving the right to redress was void as being an unconstitutional regulation of commerce by the State. This, indeed, was the very point decided in *Sherlock v. Alling*, above cited. If it is competent for the State thus to administer justice according to its own laws for wrongs done and injuries suffered, when committed and inflicted by defendants while engaged in the business of interstate or foreign commerce, notwithstanding the power over those subjects conferred upon Congress by the Constitution, what is there to forbid the State, in the further exercise of the same jurisdiction, to prescribe the precautions and safe guards foreseen to be necessary and proper to prevent by anticipation those wrongs and injuries which after they have been inflicted, it is admitted the State has power to redress and punish? If the State has power to secure to passengers conveyed by common carriers in their vehicles of transportation a right of action for the recovery of damages occasioned by the negligence of the carrier in not providing safe and suitable vehicles, or employes of sufficient skill and knowledge, or in not properly conducting and managing the act of transportation, why may not the State also impose, on behalf of the public, as additional means of prevention, penalties for the non-observance of these precautions? Why may it not define and declare what particular things shall be done and observed by such a carrier, in order to insure the safety of the persons and things he carries, or of the persons and property of others liable to be affected by them?

"It is that law which defines who are or may be common carriers, and prescribes the means they shall adopt for the safety, of that which is committed to their charge, and the rules according to which, under varying conditions, their conduct shall be measured and judged, which declares that the common carrier owes the duty of care, and what shall constitute that negligence for which he shall be responsible.

"But for the provisions on the subject found in the local law of each State, there would be no legal obligation on the part of the carrier, whether *ex contractu* or *ex delicto*, to those who employ him; or if the local law is held not to apply where the carrier is engaged in foreign or interstate commerce, then, in the absence of laws passed by Congress or presumed to be adopted by it, there can be no rule of decision based upon rights and duties supposed to grow out of the relation of such carriers to the public or to individuals. In other words, if the law of the particular State does not govern that relation, and prescribe the rights and duties which it



implies, then there is and can be no law that does until Congress expressly supplies it, or is held by implication to have supplied it, in cases within its jurisdiction over foreign and interstate commerce. The failure of Congress to legislate can be construed only as an intention not to disturb what already exists, and is the mode by which it adopts, for cases within the scope of its power, the rule of the state law, which until displaced covers the subject.

"There is no common law of the United States, in the sense of a national customary law, distinct from the common law of England as adopted by the several States each for itself, applied as its local law, and subject to such alteration as may be provided by its own statutes. *Wheaton v. Peters*, 33 U. S. 8 Pet. 591, (8:1055). A determination in a given case of what that law is may be different in a court of the United States from that which prevails in the judicial tribunals of a particular State. This arises from the circumstance that the Courts of the United States, in cases within their jurisdiction, where they are called upon to administer the law of the State, in which they sit or by which the transaction is governed, exercise an independent though concurrent jurisdiction, and are required to ascertain and declare the law according to their own judgment. This is illustrated by the case of *N. Y. Cent. R. R. Co. v. Lockwood*, 84 U. S. 17 Wall. 357 (21:627) where the common law prevailing in the State of New York, in reference to the liability of common carriers for negligence, received a different interpretation from that placed upon it by the judicial tribunals of the State; but the law as applied was none the less the law of that State.

"In cases, also arising under the *lex mercatoria*, or law merchants, by reason of its international character, this court has held itself less bound by the decisions of the state courts than in other cases. *Swift v. Tyson*, 41 U. S. 16 Pet. 1 (10:865); *Carpenter v. Providence Washington Ins. Co.*, 41 U. S. 16 Pet. 495 (10:1044); *Oates v. First Nat. Bank*, 100 U. S. 239, (25:580); *Brooklyn, C. & N. R. R. Co. v. National Bank of Republic*, 102 U. S. 14 (26:61).

"There is, however, one clear exception to the statement that there is no national common law. The interpretation of the Constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history. The code of constitutional and statutory construction which, therefore, is gradually formed by the judgments of this court, in the application of the Constitution and the laws and treaties made in pursuance thereof, has for its basis so much of the common law as may be implied in the subject, and constitutes a common law resting on national authority. *Moore v. U. S.*, 91 U. S. 270 (23:346)."

In *Murray v. Chicago & N. W. Ry. Co.* (1894), 62 Fed. Rep. 24, 26, *et seq.* Mr. District Judge Shiras, holding the United States Circuit Court in the Northern District of Iowa, stated: "The principal point made in the demurrer is that the petition on its face shows that the shipments made from Belle Plaine, Iowa to Chicago, Ill. were in the nature of interstate commerce, the regulation of which is reserved to congress, exclusively, by section 8, art. 1, of the constitution of the United States, and that, at the dates of the several shipments in the petition described, there was no act of congress or other law regulating commerce between the several states. If I understand correctly the position of the defendant company, it is that, as this action was commenced in the state court, this court, upon removal, succeeds only to the jurisdiction which the state court might have exercised rightfully in case no removal had been had; that in the state court the action could not be maintained for two reasons: First, that as section 8, art. 1, of the constitution of the United States confers the right to regulate interstate commerce exclusively upon congress, thereby depriving the states of the power to legislate touching the same, it follows that state courts are deprived of all jurisdiction over cases growing out of interstate commerce; and, second, that there is no common law of the United States; that the common law of England has become the common law of the several states, in such sense that each state has its own common law; and that the common law of the state of Iowa cannot be applied to interstate commerce in view of the provisions, already cited, of the constitution of the United States. Dealing with these propositions in the reverse order of their statement, is it true that the principles of the common law are not in force in the United States with respect to such subjects as are placed within the exclusive control of congress? It will not be questioned that, before the Revolution, the common law was in force, so far as applicable in the several colonies then existing. Thus, in *U. S. v. Reid*, 12 How. 361, 363, it is said:

"The colonists who established the English colonies in this undoubtedly brought with them the common and statute laws of England, as they stood at the time of their emigration, so far as they were applicable to the situation and local circumstances of the colony."

"When the constitution of the United States was adopted, it was based upon the general principles of the common law, and its correct interpretation required that the several provisions thereof shall be read in the light of these general principles. The final disruption of all political ties between the colonies and the mother country did not terminate the existence of the common law in the colonies. It came originally into the several colonies, not by force of legislative enactments to that effect by the parliament of Great Britain, and the effect of which might be held to have terminated when the colonies became independent, but, as is said by Mr. Justice Story, speaking for the supreme court in *Van Ness v. Pacard*, 2 Pet. 137-144:

"Our ancestors brought with them its general principles, and claimed it as their birthright; but they brought with them and adopted only that portion which was applicable to their situation."

"In *Cooley*, Const. Lim. 31, it is said:

"From the first the colonists in America claimed the benefit and protection of the common law. In some particulars, however, the common law, as then existing in England, was not suited to their condition and circumstances in the new country, and those particular they omitted as it was put in practice by them. They also claimed the benefit of such statutes as, from time to time, had been enacted in modification of this body of rules; and, when the difficulties with the home government sprung up, it was a source of immense moral power to the colonists that they were able to show that the rights they claimed were conferred by the common law, and that the king and parliament were seeking to deprive them of the common birthright of Englishmen. \* \* \* While colonization continued,—that is to say, until the war of the Revolution actually commenced,—these decisions were authority in the colonies, and the changes made in the common law up to the same period were operative in America also, if suited to the condition of things here. The opening of the war of the Revolution is the point of time at which the continuous stream of the common law became divided, and that portion which had been adopted in America flowed on by itself, no longer subject to changes from across the ocean, but liable still to be gradually modified through changes in the modes of thought and of business among the people, as well as through statutory enactments. The colonies also had legislatures of their own, by which laws had been passed which were in force at the time of separation, and which remained unaffectedly thereby. When, therefore, they emerged from the colonial condition into that of independence, the laws which governed them consisted—First, of the common law of England, so far as they had tacitly adopted it, as suited to their condition; second, of the statutes of England or of Great Britain, amendatory of the common law, which they had in like manner adopted; and, third, of the colonial statutes. The first and second constituted the American common law, and by this, in great part are rights adjudged and wrongs redressed in the American states to this day."

"Thus it appears that, when the constitution of the United States was adopted, the general rules of the common law, in so far as they were applicable to the conditions then existing in the colonies, and subject to the modifications necessary to adapt them to the uses and needs of the people, were recognized and were in force in the colonies, and the people thereof were entitled to demand the enforcement thereof through the judicial tribunals then existing. The adoption of the constitution did not deprive the people of the several colonies of the protection and advantages of the common law. The constitution itself recognizes the fact of the continued existence of the common law, and indeed it is based upon the principles thereof, and its correct interpretation required that its provisions shall be read and construed in the light thereof. By section 2, art. 3, of the constitution it is declared that:

"The judicial power shall extend to all cases in law and equity, arising under this constitution; the laws of the United States, and treaties made or which shall be made, under their authority: \* \* \* to all cases of admiralty and maritime jurisdiction. \* \* \*"

"In this section we have a clear recognition of the existence of the several systems of law, equity, and admiralty. The section does not create these systems, but, recognizing their existence, it declares the extent of federal jurisdiction in regard thereto. The rules and principles which form the laws maritime are not created by the situation, for, as is said by Chief Justice Marshall, in *Insurance Co. v. Canter*, 1 Pet. 511-546:

"A case in admiralty does not, in fact, arise under the constitution or laws of the United States. These cases are as old as navigation itself, and the law admiralty and maritime, as it has existed for ages, is applied by our Courts to the cases as they arise."

"In *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 344-390, it is declared that:

"By the constitution, the entire admiralty power of the country is lodged in the federal judiciary, and congress intended, by the ninth section, to invest the district courts with this power, as courts of original jurisdiction."

"The constitution does not create a system of maritime law, nor does it enact that the system, as prevailing in England or in Europe shall become the law of the United States; but, recognizing the fact that, the law maritime was then in force in the colonies, it confers the jurisdiction upon the federal courts. The same is true of the equitable jurisdiction. It is certainly not necessary to cite authorities in support of the proposition that the constitution of the United States neither created nor enacted a system of equitable jurisprudence and procedure, but, recognizing the existence of the system, it conferred upon the courts of the United States jurisdiction in equity, maintaining the pre-existing distinction between equitable and legal remedies. Is it not clear that the same is true in regard to the common law? At the time of the adoption of the constitution there was in existence in the colonies the system of the common law, of equity, and of admiralty. It was not the purpose of the constitution to abrogate any one of these systems. One of the main objects sought to be accomplished was to establish the extent of the legislative and judicial powers of the national government then being created. Owing to the fact



that it was not proposed to destroy the state governments then existing, but, continuing these, to create a national government, to be paramount and supreme within its limited sphere, it became a necessity that the extent of the powers of each government should be defined; and, in a general sense, it may be said that the plan adopted was to confer upon the national government the power of control over subjects affecting the country or people at large, reserving to the states control over all that are local, or which do not require a uniform system or law for their proper regulation. Can it be denied that, at the time of the adoption of the constitution, the people of the several states possessed the rights and were subject to the duties and obligations, recognized and enforced by the principles and modes of procedure forming the separate systems of law, equity, and admiralty? Is there any ground for holding that it was the purpose of the constitution to recognize the continuing existence of the systems of equity and admiralty, but to deny the existence of the common law, or to refuse its recognition? Such a construction of its provisions is clearly inadmissible. The principles and modes of procedure of the three systems of law, equity, and admiralty, in force previous to the adoption of the constitution, remained in force after its adoption, save as to such modification as were created by the provisions of the constitution. That this is the true view of the question appears, not only from the references found in the constitution, and the amendments thereto, to the common law, as a recognized and existing system, but in the judiciary act of 1789 the several branches of the law, such as the law of nations, the common law, the admiralty and maritime law, and equity are fully recognized as then existing, and the jurisdiction arising under the same is divided between the courts created by that act. That the principles of the common law have always been recognized and enforced in proper cases by the courts of the United States is a proposition so plain that a citation of the cases is not necessary for its support; yet, to show the course of judicial action in this particular, a few of the numerous cases to be found in the decisions of the supreme court will be quoted from.

"In *Cox v. U. S.*, 6 Pet. 172-204, wherein suit was brought in the United States court in Louisiana upon the bond of a navy agent, it was held that the bond must be deemed to be a contract performable at the city of Washington, 'and the liability of the parties must be governed by the rules of the common law.' To the same effect is the ruling in *Duncan v. U. S.*, 7 Pet. 435. In *Swift v. Tyson*, 16 Pet. 1-18,—a case involving the law of negotiable paper,—the supreme court held that the provisions of the thirty-fourth section of the judiciary act of 1789 did not require the courts of the United States to follow the ruling of the state courts upon the principles established in the general commercial law, it being said by Mr. Justice Story, speaking for the court, that:

"We have not now the slightest difficulty in holding that this section, upon its true intentment and construction, is strictly limited to local statutes and local usages of the character before stated, and does not extend to contracts and other instruments of a commercial nature, the true interpretation and effect whereof are to be sought, not in the decisions of the local tribunals, but in the general principle and doctrines of commercial jurisprudence."

"To the same effect is the ruling in *Oates v. Bank*, 100 U. S. 239, and *Railroad Co. v. National Bank*. 102 U. S. 14. In the latter case it is said:

"The decisions of the New York court, which we are asked to follow in determining the right of parties under a contract there made, are not in exposition of any law local to that state, but as to their rights under the general commercial law existing throughout the Union, except where it may have been modified or changed by some local statute. It is a law not peculiar to one state, or dependent upon local authority, but one arising out of the usages of the commercial world."

"In *Fenn. v. Holmes*, 21 How. 481-484, it is said:

"In every instance in which this court has expounded the phrases "proceedings at common law" and "proceedings in equity," with reference to the exercise of the judicial powers of the courts of the United States, they will be found to have interpreted the former as signifying the application of the definitions and principles and rules of the common law to the rights and obligations essentially legal, and the latter as meaning the administration with reference to equitable, as contradistinguished from legal, rights of the equity law, as defined and enforced by the court of chancery in England."

"In *Railroad Co. v. Lockwood*. 17 Wall. 357. the question of the power of a common carrier to exempt himself by contract from the liability placed upon him by the common law is discussed at length, and it was held that the court was bound to decide the question upon the ground of public policy, and according to the principles of general commercial law.

"The case of *Kohl v. U. S.*, 91 U. S. 367, 374-376, presented the question whether the United States could exercise the right of eminent domain for the purpose of condemning land in the city of Cincinnati, to be used as a site for a public post office. The right was maintained, it being said that:

"When the power to establish post offices and to create courts within the states was conferred upon the federal government, included in it was authority to obtain sites for such offices and for courthouses, and to obtain them by such means as were known and appropriate. The right of eminent domain was one of those means, well known when the constitution was adopted and employed to obtain

lands for public uses. Its existence therefore, in the grantee of that power, ought not to be questioned. \* \* \* The right of eminent domain always was a right at common law. It was not a right in equity, nor was it even the creature of a statute. The time of its exercise may have been prescribed by statute, but the right itself was superior to any statute. \* \* \* It is difficult, then, to see why a proceeding to take land by virtue of the government's eminent domain, and determining the compensation to be made, for it, is not, within the meaning of the statute, a suit at common law, when initiated in a court. It is an attempt to enforce a legal right.'

"In *Moore v. U. S.*, 91 U. S. 270, the question was, by what law is the court of claims to be governed in respect to the admission of evidence in the hearings had before it? and the supreme court held that:

" 'In our opinion it must be governed by law; and we know of no system of law by which it should be governed other than the common law. That is the system from which our judicial ideas and legal definitions are derived. The language of the constitution and of many acts of congress could not be understood without reference to the common law. The great majority of contracts and transactions which come before the court of claims for adjudication are permeated, and are to be adjudged, by the principles of the common law.'

"In *Atchison, T. & S. F. R. Co. v. Denver & N. O. R. Co.*, 110 U. S. 667-681, 4 Sup. Ct. 185, it is said:

" 'The Atchison, Topeka & Santa Fe Company, as the lessee of the Pueblo & Arkansas Valley Railroad, has the statutory right to establish its own stations, and to regulate the time and manner in which it will carry persons and property, and the price to be paid therefor. As to all these matters it is undoubtedly subject to the power of legislative regulation, but, in the absence of regulation, it owes only such duties to the public, or to individuals, associations, or corporations, as the common law, or some custom having the force of law, has established for the government of those in its condition.'

"In *Railroad Co. v. Baugh*, 149 U. S. 368, 13 Sup. Ct. 914, was presented the question whether the engineer and fireman of a locomotive engine are fellow servants, so that the fireman could not recover from the railway company damages for injuries caused by the negligence of the engineer, there being no statutory enactment to that effect in the state of Ohio, wherein the accident happened. Under the decisions of the supreme court of Ohio, liability on part of the railway company existed; but the supreme court of the United States refused to follow these rulings, holding that:

" 'The question is essentially one of general law. It does not depend upon any statute. It does not spring from local usage or custom. There is in it no rule of property, but it rests upon those considerations of right and justice which have been gathered into the great body of the rules and principles known as the "common law". There is no question as to the power of the states to legislate and change the rules of the common law in this respect, as in others; but in the absence of such legislation, the question is one determinable only by the general principles of that law.'

"Citations of this character from the decisions of the supreme court might be continued almost without limit. From them it appears, beyond question, that the constitution, the judiciary act of 1789, and all subsequent statutes, upon the same subject are based upon the general principles of the common law, and that, to a large extent, the legislative and judicial action of the government would be without support and without meaning if they cannot be interpreted in the light of the common law. When the constitution was adopted, it was not the design of the framers thereof to create any new systems of general law, nor to supplant those already in existence. At that time there were in existence and in force in the colonies or states, and among the people thereof, the law of nations, the law admiralty and maritime, the common law, including commercial law, and the system of equity. Upon these foundations the constitution was erected. The problem sought to be solved was not whether the constitution should create or enact a law of nations, of admiralty, of equity, or the like, but rather how should the executive, legislative, and judicial powers and duties based upon these systems, and necessary for the proper development and enforcement thereof, be apportioned between the national and state governments. The principles, duties, and obligations inhering in these systems of law were already in force. The constitution neither created nor adopted them, but, recognizing the fact that they were in fact in existence, and were the possessions of the people, it proceeded to apportion the exercise thereof between the national and state governments. The general line of division, as already said, is based upon the principle of national control over subjects affecting the country and the people as a whole, and wherein uniformity of rule and control is desirable, if not indispensable, and of state control over subjects of local interests. The result was that upon the national government was conferred, as to some subjects, paramount and exclusive control; as to others, paramount, but not exclusive, control, unless congress by legislation excluded state action; as to others, control concurrent with the states. The division thus made is as to the subjects of legislative and judicial jurisdiction, and not a division of systems of law. The constitution does not place under national control the law of nations and of admiralty, and under state control common law and equity, but it divides the subjects of governmental control, and each subject carries with it the law or system appropriate thereto. The subject-matter of dealing with other nations is conferred exclu-



sively upon the national government, and of necessity all questions arising under the law of nations and the right to seek changes in this law by conventions with other governments are committed to the national government. The right to regulate foreign commerce is conferred exclusively upon congress, and of necessity that confers upon the national legislature and judiciary the duty of enforcing the law maritime. The right to regulate interstate commerce is conferred exclusively upon congress, and, when it legislates, the resulting statute will be interpreted with reference to the general principles of the common law. In the absence of congressional regulation of interstate commerce, the courts called upon to decide cases arising out of interstate commerce must apply the principles of the common law. So, also, when called upon to decide cases arising out of intrastate commerce, when there is no state statute, or law applicable thereto, the courts must apply the common law. The apportionment of control over foreign, inter and intrastate commerce, made by the constitution, did not affect the applicability of the common law thereto. It divided the control over the general subject of commerce, and apportioned to the national government exclusive legislative control over foreign and interstate commerce; and this apportionment carried with it the right to confer upon the national judiciary jurisdiction over cases involving foreign and interstate commerce, and, in the exercise of this jurisdiction, the courts are bound by the general principles of the common law, save where the same have been changed by legislative enactment.

"To me it seems clear, beyond question, that neither in the constitution, nor in the statutes enacted by congress, nor in the judgments of the supreme court of the United States can there be found any substantial support for the proposition that, since the adoption of the constitution, the principles of the common law have been wholly abrogated touching such matters as are by that instrument placed within the exclusive control of the national government. But it is not to be denied that support to the proposition is to be found in part of the reasoning employed by Mr. Justice Matthews in announcing the opinion of the supreme court in *Smith v. Alabama*, 124 U. S. 465, 8 Sup. Ct. 564. This case came before the supreme court upon a writ of error bringing into review a judgment of the supreme court of Alabama affirming a judgment of the city court of Mobile in habeas corpus proceedings, and which presented the question whether a statute of the state of Alabama, providing for the examination and licensing of engineers, engaged in operating locomotive engines in that state, was void, as applied to engineers running interstate trains, on the ground that it was an attempt to regulate interstate commerce. The case did not in fact involve any question in regard to the common law. The judgment of the court was that the statute was passed to secure the safety of the public in person and property, and any effect it had upon interstate commerce was incidental and remote; and the validity of the statute was sustained. In the course of the opinion it is pointed out that the laws of the states provide for remedies in cases of nonfeasance or misfeasance on part of common carriers, and that it had never been held that such laws were void, as being unconstitutional regulations by the state of interstate commerce. Following these propositions, we find it said:

"But for the provisions on the subject found in the local law of each state, there would be no legal obligation on the part of the carrier, whether *ex contractu* or *ex delicto*, to those who employ him; or, if the local law is held not to apply where the carrier is engaged in foreign or interstate commerce, then, in the absence of laws passed by congress or presumed to be adopted by it, there can be no rule of decision based upon rights and duties supposed to grow out of the relation of such carriers to the public or to individuals. In other words, if the law of the particular state does not govern that relation, and prescribe the rights and duties, which it implies, then there is and can be no law that does until congress expressly supplies it, or is held by implication to have supplied it, in cases within its jurisdiction over foreign and interstate commerce. The failure of congress to legislate can be construed only as an intention not to disturb what already exists, and is the mode by which it adopts for cases within the scope of its power, the rule of the state law, which, until displaced, covers the subject. There is no common law of the United States, in the sense of a national customary law, distinct from the common law of England, as adopted by the several states, each for itself, applied as its local law, and subject to such alterations as may be provided by its own statutes. \* \* \* There is, however, one clear exception to the statement that there is no national common law. The interpretation of the constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history. The code of constitutional and statutory construction which, therefore, is gradually formed by the judgments of this court, in the application of the constitution and the laws and treaties made in pursuance thereof, has for its basis so much of the common law as may be implied in the subject and constitutes a common law, resting on national authority."

"The meaning to be given to this last sentence quoted from the opinion of Mr. Justice Matthews is not at all clear. If it be true that the supreme court, in construing the provisions of the constitution, and the laws and treaties made in pursuance thereof, has the right to adopt, as the basis of its construction, so much of the common law as may be implied in the subject, which proposition seems to be affirmed, then is it not true that the principles of the common law, so far as applicable to the subject-matter, are recognized as in force touching matters of national control? It is evident that it was present to the mind of the learned justice whose opinion we are considering that it would not do to hold that the failure of congress to legislate touching the duties and obligations of common carriers engaged in

interstate commerce left the public without any law for its protection, and therefore, the suggestion is made that:

"The failure of congress to legislate can be construed only as an intention not to disturb what already exists, and is the mode by which it adopts, for cases within the scope of its power, the rule of the state law."

"The rule prevailing in the different states may be variant or antagonistic. A delivery of goods may be made to a common carrier in California, for transportation to New York. Do the legal relations, duties, and obligations existing between the shippers and carrier vary and change as the shipment passes state boundaries, so as to accord with the local law of each state through which the carrier may choose to take them? Upon such a theory, what becomes of the principle that the exclusive control of foreign and interstate commerce was committed to congress in order to secure a uniform rule touching the same? I would amend the statement of Mr. Justice Matthews so that it should read:

"The failure of congress to legislate can be construed only as an intention not to disturb what already exists; and as, at the time of the adoption of the constitution, common carriers, under the principles of the common law, were subject to certain duties and obligations, the failure on the part of congress to legislate thereon evinces the legislative intent to leave the rules and principles of the common law in full force, as controlling and defining the relations, duties, and obligations of common carriers engaged in interstate commerce."

"It will be further noticed that it is suggested in the opinion that it might be implied that congress has supplied a law or rule governing foreign and interstate commerce. Is there not as good ground to be found in the provisions of the constitution, and the statutes based thereon, for implying the recognition of the principles of the common law, as there is for implying the recognition of the law of nations, or the maritime law as applied to foreign commerce? Suppose a merchant or manufacturer residing in the United States makes a shipment of goods by land into the dominion of Canada, and another shipment of goods to England by sea, in both instances the goods being delivered to common carriers for transportation and delivery; would not the duty and obligations resting upon the steamship line to which the goods destined for England were delivered be measured by the law maritime? What express provision of the constitution or of the statutes of the United States declares that shipowners engaged in foreign commerce are subject to the law maritime? Has congress ever adopted a code of laws declaring what the rules and principles are that are applicable to foreign commerce carried on over the high seas or the navigable waters of the country? It has adopted specific provisions modifying the general principles of the law, but it has always recognized the existence of the general system. Can it be contended that, in the absence of legislation by congress expressly adopting the law maritime, foreign shipments upon the ocean are without legal protection; that, from the acceptance of the goods for transportation and delivery, no implied contract is created; that the respective rights and duties of the parties are such, and such only, as may be created by express contract between the parties? Even if an express contract is entered into, by what rules and principles are its provisions to be construed? That the law maritime has been in force, and is now in force, in the United States, cannot be questioned; and yet it was not created or expressly enacted in the constitution or any act of congress. That system of law was in existence when the constitution was adopted, and its existence is recognized in the constitution; and provision is made for enforcing the same by conferring admiralty jurisdiction upon the courts of the United States. From this the inference, and the only inference, is that it was not the intent of the constitution to abrogate the then existing maritime law, but, recognizing its existence, to provide for its enforcement in all matters to which it is applicable, including foreign commerce. There is no doubt, therefore, that as to that part of foreign commerce which is carried on through the agency of common carriers upon navigable waters, there is a system of law applicable thereto, and courts having jurisdiction to enforce the principles of the system. How is it, in regard to that part of foreign commerce carried on with neighboring countries, where the transportation is by land, as in the case supposed of a shipment of goods to Canada? It is said that the common carrier engaged in foreign commerce cannot be held subject to the principles of the common law, and therefore it cannot be applied to shipments made in foreign countries. Is not the existence of the common law as fully recognized in the constitution, as the maritime? Do not the constitution and the judiciary act confer upon the courts of the United States full common-law jurisdiction? Are not the courts of the United States, therefore, authorized to enforce the principles of the law maritime and the common law in all cases to which they are applicable, and which are within the jurisdiction of the federal courts? Suppose a shipment of goods is made from San Francisco through New York to England. The carrier receives the goods to be sent by land to New York, and thence by ship to England. No special contract is made. This shipment is a matter of foreign commerce. When placed on shipboard at New York for transportation to England, is there any doubt that the law maritime is applicable thereto, and that, if litigation should arise regarding the ocean transportation, the courts of the United States would apply the principles of the law maritime thereto? If litigation with the common carrier should arise touching the land transportation, would not the courts of the United States have the right to apply the principles of the common law thereto? Upon what fair principle of construction can it be held that the constitution so far recognizes the law maritime that it must be held to be in force, but that the recognition of the common law is not sufficient to keep it in force in matters of national concern?



"In *Swift v. Railroad Co.*, 58 Fed. 853,—a case decided by the United States circuit court, for the northern district of Illinois,—it is held that the law of the state of Illinois could not be applied to contracts for shipments of property into other states; that interstate commerce cannot be controlled by the local law of the state, either statutory or common; that, previous to the enactment of the interstate commerce act by congress, there was no act of congress regulating interstate commerce; that the United States had never adopted the common law; that, previous to the adoption of the interstate commerce act in 1887, there was therefore no law controlling the relations of carriers and shippers in regard to interstate commerce. If it be true that the principles of the common law are not in force in this country in regard to such matters as are placed under national control, then it is difficult to escape the conclusions reached by Judge Grosscup in the case just cited; but I cannot concur in the proposition that the principles of the common law have no existence in this country, as applicable to national affairs, or that these principles have only a local existence, due to their adoption by the several states. It is certainly a novel proposition that up to the date of the enactment of the interstate commerce act, in 1887, all the foreign and interstate commerce of the country was without the pale of law and that there were no legal rules or principles which governed or controlled the relations between the shippers or carriers engaged in that business; and yet such seems to be the conclusion in *Swift v. Railroad Co.* In *Railway Co. v. Osborne*, 3 C. C. A. 347, 52 Fed. 912,—a case involving the construction of the interstate commerce act,—Mr. Justice Brewer, speaking for the court, held:

"It was the first effort of the general government to regulate the great transportation business of the country. That business, though of a quasi public nature, and therefore subject to a governmental regulation, has, as a matter of fact, been carried on by private capital through corporations. That fact that it was a public business always prevented the owners of capital invested in it from charging like owners of other property, any price they saw fit for its use. A reasonable compensation was all they could exact, and he who felt aggrieved by a charge could always invoke the aid of the courts to protect himself against it."

"Mr. Justice Brewer is here speaking of the condition of affairs before the enactment of the interstate commerce act, and he expressly declares that, prior to that act, common carriers engaged in interstate commerce were bound to charge only a reasonable compensation, or, in other words, they were subject to the principles of the common law."

"It is further argued that it has been repeatedly decided that the inaction of congress, up to 1887, in passing any law regarding interstate commerce, shows that the intent was to leave such commerce free from all restraint, and therefore, common carriers assumed no common-law liability in undertaking shipments of goods from one state to another. The decisions of the supreme court in the numerous cases involving the validity of state laws affecting foreign and interstate commerce have always held that the inaction of congress could not be construed to mean that the states were at liberty to legislate in regard to these subjects in the absence of congressional legislation, but that such inaction evidenced that it was the intent of congress to leave commerce, foreign and interstate, free from all legislative restrictions. It has never been held, however, that the freedom of commerce meant that those engaged in carrying it on were not under legal restraints and obligations growing out of the relations of carriers and shippers. If the theory now contended for by the defendant company be correct, then from the foundation of the government up to April 4, 1887, when the interstate commerce act took effect, it was open to all the common carriers engaged in foreign and interstate commerce to act as they pleased in regard to accepting or refusing freights, in regard to the prices they might charge, in regard to the care they should exercise, and the speed with which they should transport and deliver the property placed in their charge. What more disastrous restraint upon the true freedom of foreign and interstate commerce could be devised than the adoption of the doctrine that the inaction of congress left the carriers engaged therein entirely free to accept and transport the property of one man or corporation, and to refuse to accept the like property of another, or to transport the products of one locality, and to refuse to transport those of another; to charge an onerous toll upon the property of one, and carry that of his neighbor for nothing? Can it be possible that the transcontinental railways and other federal corporations engaged in foreign and interstate commerce, in the absence of congressional legislation, were not under any legal restraints, and that the citizen, in his dealings with them, was without legal remedy or protection? In the absence of congressional legislation, what law could be applied to them, with regard to matters under the exclusive control of the national government, except the principles of the common law or the law maritime? I cannot yield assent to the broad proposition that, as to those subjects over which congress is given exclusive legislative control, there is no law in existence if congress has not expressly legislated in regard thereto. The true doctrine, in my judgment, is that the constitution of the United States, when it was adopted, gave full recognition to the existing systems of the law of nations, of admiralty and maritime, of the common law, and equity. It apportioned to the national government, then created, control over certain subjects, exclusive as to some, concurrent as to others. This apportionment of control over certain subjects necessitated the exercise of both legislative and judicial powers, and provision was made for the former in the creation of congress, and for the latter in the creation of the supreme court, and by conferring authority on congress to create other courts. The courts thus created were vested with jurisdiction in admiralty and at common law and in

equity. If there is no common-law jurisdiction to be exercised, and no common-law principles to be enforced, why create courts for that purpose? But it is said in *Swift v. Railroad Co.*, and the same, though, is found in other cases, that, 'the courts of the United States have had many occasions to enforce the common law, but in every instance it has been as the municipal law of the state by which the subject-matter was affected.' This may be generally, but it is not universally, true. In *Mississippi Mills v. Cohn*, 150 U. S. 202, 14 Sup. Ct. 75, we find a case which was originally brought in a court of the state of Louisiana, in which state the civil, and not the common, law is in force. The suit was removed into the United States circuit court, and was by that court dismissed for want of jurisdiction, upon the ground that, being a suit in equity, it could not be maintained, because the remedy at law was sufficient. The supreme court reversed the ruling, holding that even if, under the law of the state of Louisiana,—that is, the civil law,—the remedy at law was sufficient, yet that fact would not defeat the jurisdiction in equity of the federal court, for the reason 'that the inquiry, rather, is whether, by the principles of common law and equity, as distinguished and defined in this and the mother country at the time of the adoption of the constitution of the United States, the relief here sought was one obtainable in a court of law, or one which only a court of equity was fully competent to give.' In this ruling the supreme court was certainly not enforcing the municipal law of the state of Louisiana. If courts of the United States can only recognize and enforce the principles of the common law when the same form part of the municipal law of the state, how comes it that the supreme court directed the circuit court in Louisiana to apply the principles of the common law and of equity, as they existed when the constitution was adopted, to the decision of the question of jurisdiction arising in that case? Suppose a state should enact that all questions of title to realty should be triable only in a court of equity, and in accordance with the principles of equity; would that enactment confer upon the courts of the United States the same jurisdiction, and thus permit a question of strict legal title to be tried in equity in the courts of the United States, if, according to the principles of the common law in force when the constitution was adopted, an action in ejectment would afford an ample remedy? Clearly, the federal court could in such case entertain only the common-law action, and in so doing it would be acting under and enforcing the principles of the common law, not the municipal law of the state, for it would be disregarding that, but the common law brought by our ancestors from the mother country.

"Perhaps the most forcible illustration of the fact that the government of the United States does recognize and enforce the principles of the common law with regard to subjects wholly within national control, and not as part of the municipal law of any state, is found in connection with the organization and proceedings of the court of claims. This court is not a court in and for the district of Columbia, nor is it a court of any district or circuit. It has jurisdiction over cases arising in any of the states or territories. It has jurisdiction to hear and determine cases against the United States. Of all the courts in the Union, it is the one dealing with matters of national concern, arising under the constitution and laws of the United States, and not under the local law of the several states. The form of procedure is statutory, supplemented by rules of its own adoption. As to this court thus organized, and clothed with a jurisdiction wholly national in its character, the express ruling of the supreme court is to the effect that the general law controlling its action is the common law. To repeat a quotation already made from the opinion of the supreme court in *Moore v. U. S.*, 91 U. S. 270, in regard to the court of claims:

" 'In our opinion, it must be governed by law; and we know of no system of law by which it should be governed other than the common law. \* \* \* The great majority of contracts and transactions which come before the court of claims for adjudication are permeated and are to be adjudged by the principles of the common law.'

"To the same effect is the ruling in *U. S. v. Clark*, 96 U. S. 37, and there are no decisions to the contrary. There is no act of congress which adopts the common law, as the rule of action for the court of claims. The reasons which declare the common law to be the system governing its action apply equally to the other courts of the United States. By the provisions of the act of congress of March 3, 1887, concurrent jurisdiction with the court of claims is conferred upon the district and circuit courts of the United States. Many of the claims against the United States arise out of implied contracts; that is, the facts are such that, according to the principles of the common law, an obligation to pay for the use of property is implied, in the absence of an express contract. Thus, in *U. S. v. Palmer*, 128 U. S. 262, 9 Sup. Ct. 104, the judgment of the court of claims awarding to Palmer the sum of \$2,256.75 as a reasonable compensation for the use, by the government, of certain patented military equipments, was sustained by the supreme court, it being said that 'we think an implied contract for compensation fairly arose under the license to use, and the actual use, little or much, that ensued thereon'. In this case there was no express agreement for compensation nor for the amount thereof. Applying the principles of the common law to the facts, the court of claims held that the law would imply a contract to pay a reasonable compensation, and the supreme court affirmed the judgment. Had Palmer brought the suit in a circuit court of the United States instead of in the court of claims, is it possible he would have been defeated on the ground that the local law of the state, did not apply, and that the common law could not be invoked in a circuit court of the United States, and therefore there was no law applicable to the situation in the absence of an express contract? The right of recovery in such cases is not dependent upon the court in which the action may be brought, but upon the question of the principles



of law—that is, the system of law—which are applicable to the situation, and which define the rights and obligations of the parties. Under the principles of the common law, as the same existed at the time of the separation between the colonies and Great Britain, common carriers of goods assumed certain duties and obligations to their patrons. The adoption of the constitution of the United States certainly did not change the relation existing between the carrier and the public, nor in any way affect the obligations assumed by the carrier. The constitution conferred legislative control over foreign and interstate commerce upon congress reserving to the several states legislative control over intrastate commerce. This division of legislative control did not, however, abrogate the common-law principle then in force. Thus, in *Boyce v. Anderson*, 2 Pet. 150, the question presented was whether the strict rule of the common law in regard to liability for goods lost could be applied in the case of slaves; and it was held that it would not be applied, as slaves were human beings having a volition of their own; but it was held that 'the ancient rule that the carrier is liable only for ordinary neglect still applies to them'. In determining the rights of the parties in this case, the supreme court, speaking by Marshall, C. J., relied upon the common law for its guidance. In *Bank of Kentucky v. Adams Exp. Co.*, 93 U. S. 174, the question arose as to the liability of the express company for certain packages of money sent from New Orleans, La., to Louisville, Ky., and which were destroyed by fire while in transit, the bills of lading containing stipulations in respect to the liability of the company. It will be noticed that the shipment was from one state to another, and therefore was of the nature of interstate commerce. In the course of the opinion it is said:

"We have already remarked that the defendants were common carriers. \* \* \* Having taken up the occupations, its fixed legal character could not be thrown by any declaration or stipulation that they should not be considered such carrier. The duty of a common carrier is to transport and deliver safely. He is made, by the law, an insurer against all failure to perform this duty, except such failure as may be caused by the public enemy, or by what is denominated the "act of God." \* \* \* The exception or restriction to the common-law liability introduced into the bills of lading given by the defendants. \* \* \*

"Thus we have the express declaration that a common carrier engaged in interstate commerce is subject to the common-law liability pertaining to his occupation. Many other cases of like import are to be found in the Supreme Court Reports, in which it is assumed that the principles of the common law are applicable common carriers engaged in foreign or interstate commerce; and I can see no good reason for holding that the duties and obligations imposed upon a common carrier by the common law are not operative when he undertakes the transportation of property from state to state. It is said in argument that the obligations imposed upon common carriers are largely based upon considerations of public policy; that each state determines for itself what its public policy demands; and that the courts of the United States can recognize and enforce only the public policy of the state. There is a public policy of the nation as well as that of the several states. As to all such matters as are reserved to the states, and are therefore without the plane of national control, it may well be that it is for each state to determine what public policy dictates with regard thereto. The rule of the common law is that no one can lawfully do that which is injurious to the public, or which conflicts with the prevailing sentiment or interest of the community. In determining whether a given act or course of conduct is injurious to the public interests, regard must be had to the circumstances. That which the public interests may demand in one locality may not be suited to the interests of another locality. There are many matters of a local nature which it is for each state to regulate and control for itself, either by legislation, or by judicial declarations of the results derivable from the application of common-law principles to the existing surroundings. On the other hand, there are many matters which affect the entire country, which are therefore of national importance, and which must be dealt with accordingly. In deciding legal questions arising out of the latter class of cases, courts are not confined to the inquiry whether the particular state in which the court may be sitting, has an established public policy touching the subject-matter, but they will apply the recognized principles of general jurisprudence, to wit, the principles of the common law, or of the law of nations, or of the law maritime, as the nature of the particular case may demand. Thus, in *Oscanyan v. Arms Co.*, 103 U. S. 261, the supreme court held that a contract entered into between a consul general of the Ottoman government residing at New York, and a company engaged in supplying arms, whereby the former was to be paid a commission upon all contracts secured through his aid was void, even though it might be valid in Turkey, it being said:

"But admitting this to be otherwise, and that the Turkish government was willing that its officers should take commissions on contracts obtained for it by their influence, that is no reason why the courts of the United States should enforce them. Contracts permissible by other countries are not enforceable in our country if they contravene our laws, our morality, or our policy."

"The variety of cases in which this doctrine is applied may be seen by reference to *Marshall v. Railroad Co.*, 16 How. 314; *Tool Co. v. Norris*, 2 Wall. 45; *Trist v. Child*, 21 Wall. 441; *Meguire v. Corwine*, 101 U. S. 108; *Thomas v. City of Richmond*, Id. 349; *Woodstock Iron Co. v. Richmond & D. Extension Co.*, 129 U. S. 643, 9 Sup. Ct. 402. In these cases, and others of similar import, the Supreme Court does not base the rulings upon the local law of any state, for in the majority of the cases the question arose in connection with matters outside the plane of State

control. Thus, in *Trist v. Child*, *supra*, a bill in equity was filed to enforce an agreement for services rendered in getting through Congress a bill for payment to Trist of a remuneration for his services to the United States in negotiating the treaty of Guadalupe Hidalgo with Mexico. Mr. Justice Swayne, speaking for the Court, declared that:

"It is a rule of the common law, of universal application, that where a contract, express or implied, is tainted with either of the vices last named as to the consideration of the thing done, no alleged right founded upon it can be enforced in a court of justice."

"Applying this rule of the common law to the facts of the case, the agreement sought to be enforced was held void."

"The conclusion I reach upon this subject is that at the time of the separation of the colonies from the mother country, and at the time of the adoption of the constitution, there was in existence a common law, derived from the common law of England, and modified to suit the surroundings of the people; that the adoption of the constitution and consequent creation of the national government did not abrogate this common law; that the division of governmental powers and duties between the national and state governments provided for in the constitution did not deprive the people who formed the constitution of the benefits of the common law; that, as to such matters as were by the constitution committed to the control of the national government, there were applicable thereto the law of nations, the maritime law, the principles of equity, and the common law, according to the nature of the particular matter; that, to secure the enforcement of these several systems when applicable, the constitution and Congress, acting in furtherance of its provisions, have created the Supreme Court of the United States and the other courts inferior thereto, and have conferred upon these courts the right and power to enforce the principles of the law of nations, of the law maritime, of the system of equity, and of the common law in all cases coming within the jurisdiction of the Federal courts, applying, in each instance, the system which the nature of the case demands; that, as to all matters of national importance over which paramount legislative control is conferred upon congress the courts of the United States (the supreme court being the final arbiter) have the right to declare what are the rules deducible from the principles of general jurisprudence which control the given case, and to define the duties and obligations of the parties thereto; that the common law now applicable to matters committed to the control of the national government is based upon the common law of England, as modified by the surroundings of the colonists, and as developed by the growth of our institutions since the adoption of the constitution, and the changes in the business habits and methods of our people; that the binding force of the principles of this common law, as applied to matters affecting the entire people, and placed under the control of the national government, is not derived from the action of the states, and is no more subject to abrogation or modification by state legislation, than are the principles of the law of nations or of the law maritime. The transactions out of which the present controversy arises pertain to interstate commerce. The defendant company, when engaged in transporting the grain and cattle of plaintiff from Iowa to Chicago, Ill., was acting as a common carrier of property, and assumed all the duties and obligations pertaining to that occupation. In determining the obligations assumed by a common carrier engaged in interstate commerce, the court has the right to apply the rules of the common law, unless the same have been changed by competent legislative action, and therefore, in the present case, all shipments made before the adoption of the interstate commerce act are governed by the common law, and those made since the adoption of that act by the common law as modified by that act."

In *Western Union Telegraph Co. v. Call Publishing Co.* (1901), 181 U. S. 92, 45 L. Ed. 765, 770, et seq., 21 Sup. Ct. Rep. 561, the United States Supreme Court, per Mr. Justice Brewer, stated: "To affirm that a condition of things exists under which common carriers anywhere in the country, engaged in any form of transportation, are relieved from the burdens of these obligations, is a proposition which, to say the least, is startling. And yet, as we have seen, that is precisely the contention of the telegraph company. It contends that there is no Federal common law, and that such has been the ruling of this court; there was no Federal statute law at the time applicable to this case, and, as matter is interstate commerce, wholly removed from state jurisdiction the conclusion is reached that there is no controlling law, and the question of rates is left entirely to the judgment or whim of the telegraph company."

"This court has often held that the full control over interstate commerce is vested in Congress, and that it cannot be regulated by the states. It has also held that the inaction of Congress is indicative of its intention that such interstate commerce shall be free; and many cases are cited by counsel for the telegraph company in which these propositions have been announced. Reference is also made to opinions in which it has been stated that there is no Federal common law different and distinct from the common law existing in the several states. Thus, in *Smith v. Alabama*, 124 U. S. 465, 31 L. ed. 508 1 Inters. Com. Rep. 804, 8 Sup. Ct. Rep. 564, it was said by Mr. Justice Matthews, speaking for the court:

"There is no common law of the United States in the sense of a national customary law distinct from the common law of England as adopted by the several states, each for itself, applied as its local law, and subject to such alterations as may be provided by its own statutes. *Wheaton v. Peters*, 8 Pet. 591, 8 L. ed. 1055. A determination in a given case of what that law is may be different



in a court of the United States from that which prevails in the judicial tribunals of a particular state. This arises from the circumstances that the courts of the United States, in cases within their jurisdiction where they are called upon to administer the law of the state in which they sit, or by which the transaction is governed, exercise an independent, though concurrent, jurisdiction, and are required to ascertain and declare the law according to their own judgment. This is illustrated by the case of *New York C. R. Co. v. Lockwood*, 17 Wall. 357, 21 L. ed. 627, where the common law prevailing in the state of New York in reference to the liability of common carriers for negligence received a different interpretation from that placed upon it by the judicial tribunals of the state; but the law is applied is none the less the law of that state.' P. 478, L. ed. 512, Inters. Com. Rep. 808, Sup. Ct. Rep. 569.

"Property understood, no exceptions can be taken to declarations of this kind. There is no body of Federal common law separate and distinct from the common law existing in the several states, in the sense that there is a body of statute law enacted by Congress separate and distinct from the body of statute law enacted by the several states. But it is entirely different thing to hold that there is no common law in force generally throughout the United States, and that the countless multitude of interstate commercial transactions are subject to no rules and burdened by no restrictions other than those expressed in the statutes of Congress.

"What is the common law? According to Kent: 'The common law includes those principles, usages, and rules of actions applicable to the government and security of person and property, which do not rest by their authority upon any express and positive declaration of the will of the legislature.' 1 Kent Com. 471. As Blackstone says: 'Whence it is that in our law the goodness of a custom depends upon its having been used time out of mind; or, in that solemnity of our legal phrase, time whereof the memory of man runneth not to the contrary. This is that gives it its weight and authority; and of this nature are the maxims and customs which compose the common law, or *lex non scripta*, of this Kingdom. This unwritten, or common law is properly distinguishable into three kinds: 1. General customs; which are the universal rule of the whole Kingdom, and form the common law, in its stricter and more usual signification.' 1 Bl. Com. 67, In Black's Law Dictionary, page 232, it is thus defined: 'As distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England.'

"Can it be that the great multitude of interstate commercial transactions are freed from the burdens created by the common law, as so defined, and are subject to no rule except that to be found in the statutes of Congress? We are clearly of opinion that this cannot be so, and that the principles of the common law are operative upon all interstate commercial transactions, except so far as they are modified by congressional enactment.

"But this question is not a new one in this court. In *Interstate Commerce Commission v. Baltimore & O. R. Co.*, 145 U. S. 263, 275, 36 L. ed. 699, 704, 4 Inters. Com. Rep. 92, 96, 12 Sup. Ct. Rep. 844, 847, a case which involved interstate commerce, it was said by Mr. Justice Brown, speaking for the court:

" 'Prior to the enactment of the act of February 4, 1887, to regulate commerce, commonly known as the Interstate Commerce Act (24 Stat. at L. 379, chap. 104), railway traffic in this country was regulated by the principles of the common law applicable to common carriers.'

"In *Bank of Kentucky v. Adams Exp. Co.* and *Planters' Nat. Bank v. Adams Express Co.*, 93 U. S. 174, 177, 23 L. ed. 872, 874, the express companies received at New Orleans certain packages for delivery at Louisville. These were interstate shipments. In the course of transit the packages were destroyed by fire, and actions were brought to recover the value thereof. The companies defended on the ground of an exemption from liability created by the contracts under which they transported the packages. Mr. Justice Strong, delivering the opinion of the court, after describing the business in which the companies were engaged, said:

" 'Such being the business and occupation of the defendants, they are to be regarded as common carriers, and in the absence of stipulations to the contrary, subject to all the legal responsibilities of such carriers.'

"And then proceeded to show that they could not avail themselves of the exemption claimed by virtue of the clauses in the contract. The whole argument of the opinion proceeds upon the assumption that the common-law rule in respect to common carriers controlled.

"Reference may also be made to the elaborate opinion of District Judge Shiras, holding the circuit court in the northern district of Iowa, in *Murray v. Chicago & N. W. R. Co.*, 62 Fed. Rep. 24, in which collated a number of extracts from opinions of this court, all tending to show the recognition of a general common law existing throughout the United States, not, it is true, as a body of law distinct from the common law enforced in the states, but as containing the general rules and principles by which all transactions are controlled, except so far as those rules and principles are set aside by express statute. It would serve no good purpose to here repeat those quotations; it is enough to refer to the opinion in which they are collated."

In *Parsons v. Bedford* (1830), 3 Peters 433, 7 L. Ed. 732, Mr. Justice Storey of the United States Supreme Court, in construing the meaning of the Seventh Amendment to the United States Constitution, which preserves the right of trial by jury in suits at common law, stated: "The trial by jury is justly dear to the American people. It has always been an object of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy. The right to such a trial is, it is believed, incorporated into and secured in every State Constitution in the Union; and it is found in the Constitution of Louisiana. One of the strongest objections originally taken against the Constitution of the United States, was the want of an express provision securing the right of trial by jury in civil cases. As soon as the Constitution was adopted, this right was secured by the seventh amendment of the Constitution proposed by Congress; and which received an assent of the people so general as to establish its importance as a fundamental guarantee of the rights and liberties of the people. This amendment declares that 'in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact once tried by a jury shall be otherwise re-examinable in any court of the United States, than according to the rules of the common law.' At this time there were no states in the Union the basis of whose jurisprudence was not essentially that of the common law in its widest meaning; and probably no States were contemplated in which it would not exist. The phrase 'common law', found in this clause is used in contradistinction to equity, and admiralty, and maritime jurisprudence. The Constitution had declared in the third article, 'that the judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority,' etc., and to all cases of admiralty and maritime jurisdiction. It is well known that in civil causes, in courts of equity and admiralty, juries do not intervene, and that courts of equity use the trial by jury only in extraordinary cases to inform the conscience of the court. When, therefore, we find that the amendment requires that the right of trial by jury shall be preserved in suits at common law, the natural conclusion is that this distinction was present to the minds of the framers of the amendment. By common law they meant what the Constitution denominated in the third article 'law'; not merely suits, which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable remedies were administered; or where, as in the admiralty, a mixture of public law, and of maritime law and equity was often found in the same suit. Probably there were few, if any, States in the Union, in which some new legal remedies differing from the old common law forms were not in use; but in which, however, the trial by jury intervened, and the general regulations in other respects were according to the course of the common law. Proceedings in cases of partition, and of foreign and domestic attachment might be cited as examples variously adopted and modified. In a just sense the amendment then, may well be construed to embrace all suits which are not of equity and admiralty jurisdiction, what ever may be the peculiar form which they may assume to settle legal rights. And Congress seems to have acted with reference to this exposition in the Judiciary Act of 1789, ch. 20 (which was contemporaneous with the proposal of this amendment); for in the ninth section it is provided that 'the trial of issues in fact in the district courts in all causes, except civil causes of admiralty and maritime jurisdiction, shall be by jury;' and in the twelfth section it is provided that 'the trial of issues in fact in the circuit courts shall in all suits, except those of equity and of admiralty and maritime jurisdiction, be by jury;' and again, in the thirteenth section, it is provided that 'the trial of issues in fact in the Supreme Court in all actions at law against citizens of the United States shall be by jury.'

"But the other clause of the amendment is still more important, and we read it as a substantial and independent clause. 'No fact tried by jury shall be otherwise re-examinable in any court of the United States than according to the rules of the common law.' This is a prohibition to the courts of the United States to re-examine any facts tried by a jury in any other manner. The only modes known to the common law to re-examine such facts are the granting of a new trial by the court where the issue was tried, or to which the record was properly returnable; or the award of a *venire facias de novo* by an appellate court for some error of the law which intervened in the proceedings. The Judiciary Act of 1789, ch. 20, sec. 17, has given to all the courts of the United States 'power to grant new trials in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the courts of law.' And the appellate jurisdiction has also been amply given by the same act (sec. 22, 24) to this court to redress errors of law; and for such errors to award a new trial, in suits at law which have been tried by a

Commentaries; Schouler on Bailments and Carriers; Redfield on Carriers; Hutchin-

4. The following authoritative works treat of the relative rights and liabilities of shippers and carriers, respectively, at common law governing the loss, damage, and injury to property transported: Story on Bailments; Jones on Bailments; 2 Kent's

son on Carriers; Michie on Carriers; Elliott on Bailments and Carriers; Moore on Carriers; Lawrence on Carriers; Goddard on Bailments and Carriers; Cyc; Corpus Juris; Bunge on Law of Draymen, Freight Forwarders and Warehousemen; Mohoun on Warehouse Laws and Decisions.



## 2000-B. LIABILITY OF A COMMON CARRIER AS AN INSURER OF THE PROPERTY TRANSPORTED.

In *The York Manufacturing Co. v. Illinois C. Rd. Co.*<sup>1</sup> the United States Supreme Court, per Mr. Justice Field, stated: "The law prescribes the duties and responsibilities of the common carrier. He exercises, in one sense a public employment, and has duties to the public to perform. Though he may limit his services to the carriage of particular kinds of goods, and may prescribe regulations to protect himself against imposition and fraud, and fix a rate of charges proportionate to the magnitude of the risks he may have to encounter, he can make no discrimination between persons, or vary his charges from their condition or character. He is bound to accept all goods offered within the course of his employment, and is liable to an action in case of refusal. He is chargeable for all losses except such as may be occasioned by the act of God or the public enemy. He insures against all accidents which result from human agency, although occurring without any fault or neglect on his part; and he cannot, by any mere act of his own, avoid the responsibility which the law thus imposes. He cannot screen himself from liability by any general or special notice, or can he coerce the owner to yield assent to a limitation of responsibility by making exorbitant charges when such assent is refused.

"The owner of the goods may rely upon this responsibility imposed by the common law, which can only be restricted and qualified when he expressly stipulates for the restriction and qualification. But when such stipulation is made, and it does not cover losses from negligence or misconduct, we can perceive no just reason for refusing its recognition and enforcement."

In *President, etc. Bank of Kentucky v. Adams Express Co.*<sup>2</sup> the United States Supreme Court, per Mr. Justice Strong, stated: "The duty of a common carrier is to transport and deliver safely. He is made, by law, an insurer against all failure to perform this duty, except such failure as may be caused by the public enemy, or by what is denominated the act of God. By special contract with his employers, he may, it is true, to some extent, be excused if the limitations to his responsibility stipulated for, are, in the judgment of the law, reasonable, and not inconsistent with sound public policy."

In *Chicago & E. I. Rd. Co. v. Collins Produce Co.*<sup>3</sup> the United States Supreme Court, per Mr. Justice Clarke, stated: "The common-law principle making the common carrier an insurer is justified by the purpose to prevent negligence or collusion between dishonest carriers or their servants and thieves or others, to the prejudice of the shipper, who is, of necessity, so remote from his property, when in transit, that proof of such collusion or negligence, when existing, would be difficult if not impossible. *Coggs v. Bernard*, 2 Ld. Raym. 909, 92 Eng. Reprint, 107; *Riley v. Horne*, 5 Bing. 217, 130 Eng. Reprint, 1044. 2 Moore & P. 331, 30 Revised Rep. 576. The obligation to transport and to deliver is so exceptional and absolute in character that the relation of the carrier to the shipper was characterized in *New York C. R. Co. v. Lockwood*, 17 Wall. 357, 21 L. Ed. 627, as so partaking of a fiduciary character as to require the utmost fairness and good faith on its part in dealing with the shipper and in the discharge of its duties to him; and so lately as *American Exp. Co. v. Mullins*, 212 U. S. 311, 53 L. Ed. 525, 29 Sup. Ct. Rep. 381, 15 Ann. Cas. 536, this court

declared that if a carrier, by connivance or fraud, permitted a judgment to be rendered against it for property in its charge, such judgment could not be invoked as a bar to a suit by a shipper.

“These decisions, a few from many, illustrate the character of the relation of trust and confidence which must be sustained between a common carrier and a shipper. It rests at bottom upon a commercial necessity and public policy which would be largely defeated if the carrier were permitted by false representations, or by representations which, though not intentionally false, were not known to be true, to procure the appropriation by military or other authority of property in its custody, as the jury found was done in this case, and thereby defeat its obligation to carry and deliver.”

A carrier has been held liable for the loss of goods by fire<sup>4</sup> and water.<sup>5</sup>

In the absence of proof to the contrary, the liability of a common carrier is always presumed to be its common-law liability, and any party attempting to show a greater or a less liability must assume the burden of proving the contract by which the common-law liability was affected.<sup>6</sup> In *New Jersey Steam Navigation Co. v. Merchants Bank of Boston*,<sup>7</sup> Mr. Justice Nelson, in delivering the opinion of the United States Supreme Court, stated: “The next question is as to the duties and liabilities of the respondents, as carriers, upon their contract with Harnden. As the libelants claim through it, they must affirm its provisions, so far as they may be consistent with law.

“The general liability of the carrier, independently of any special agreement, is familiar. He is chargeable as an insurer of the goods, and accountable for any damage or loss that may happen to them in the course of the conveyance, unless arising from inevitable accident—in other words, the act of God or the public enemy. The liability of the respondents, therefore, would be undoubted were it not for the special agreement under which the goods were shipped.

“The question is, to what extent has this agreement qualified the common-law liability? We lay out of the case the notices published by the respondents, seeking to limit their responsibility, because,

“1. The carrier cannot in this way exonerate himself from duties which the law has annexed to his employment; and,

“2. The special agreement with Harnden is quite as comprehensive in restricting their obligation as any of the published notices.

“A question has been made, whether it is competent for the carrier to restrict his obligation even by a special agreement. It was very fully considered in the case of *Gould, et al. v. Hill, et al.*, 2 Hill, 623, and the conclusion arrived at that he could not. See also, *Holister v. Nowlen*, 19 Wend. 240, and *Cole v. Goodwin*, *Ib.* 272, 282.

“As the extraordinary duties annexed to his employment concern only, in the particular instance, the parties to the transaction, involving simply rights of property—the safe custody and delivery of the goods—we are unable to perceive any well founded objection to the restriction, or any stronger reasons forbidding it than exist in the case of any other insurer of goods, to which his obligation is analogous; and which depends altogether upon the contract between the parties.



"The owner, by entering into the contract, virtually agrees, that, in respect to the particular transaction, the carrier is not to be regarded as in the exercise of his public employment; but as a private person, who incurs no responsibility beyond that of an ordinary bailee for hire, and answerable only for misconduct or negligence.

"The right thus to restrict the obligation is admitted in a large class of cases founded on bills of lading and charter-parties, where the exception to the common law liability (other than that of inevitable accident) has been, from time to time, enlarged, and the risk diminished, by the express stipulation of the parties. The right of the carrier thus to limit his liability in the shipment of goods has, we think, never been doubted.

"But admitting the right thus to restrict his obligation, it by no means follows that he can do so by any act of his own. He is in the exercise of a sort of public office, and has public duties to perform, from which he should not be permitted to exonerate himself without the assent of the parties concerned. And this is not to be implied or inferred from a general notice to the public, limiting his obligation, which may or may not be assented to. He is bound to receive and carry all the goods offered for transportation, subject to all the responsibilities incident to his employment, and is liable to an action in case of refusal. And we agree with the court in the case of *Hollister v. Nowlen*, that, if any implication is to be indulged from the delivery of the goods under the general notice, it is as strong that the owner intended to insist upon his rights, and the duties of the carrier, as it is that he assented to their qualification.

"The burden of proof lies on the carrier, and nothing short of an express stipulation by parol or in writing should be permitted to discharge him from duties which the law has annexed to his employment. The exemption from these duties should not depend upon implication or inference, founded on doubtful and conflicting evidence; but should be specific and certain, leaving no room for controversy between the parties."

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1. *The York Manufacturing Co. v. Illinois C. Rd. Co.*, (1866), 18 L. Ed. 170, 171, et seq., 3 Wall. 107.
  2. *President, etc., Bank of Kentucky v. Adams Express Co.*, (1876), 23 L. Ed. 872, 875, 93 U. S. 174. See also, *Germania Insurance Co. v. The Lady Pike*, (1874), 21 Wall. 1, 22 L. Ed. 499; *The Delaware v. Oregon Iron Co.*, (1872), 14 Wall. 579, 20 L. Ed. 779; *Hall v. Nashville & C. Rd. Co.*, (1872), 13 Wall. 367, 20 L. Ed. 594; *Holladay v. Kennard*, (1871), 12 Wall. 254, 20 L. Ed. 390; *Cincinnati, N. O. & T. P. Ry. Co. v. Fairbanks & Co.*, (1898), 90 Fed. Rep. 467, 33 C. C. A. 611; *Inman & Co. v. Seaboard A. L. Ry. Co.*, (1908), 159 Fed. Rep. 960.
  3. *Chicago & E. I. Rd. Co. v. Collins Produce Co.*, (1919), 249 U. S. 186, 39 Sup. Ct. Rep. 189, 63 L. Ed. 552, 555.
  4. *New Jersey Steam Navigation Co. v. Merchants' Bank of Boston*, (1848), 6 How. 344, 12 L. 465.
  5. *The Zenobia*, 30 Fed. Cases No. 18209.
  6. *New Jersey Steam Navigation Co. v. Merchants' Bank of Boston*, *supra*.
  7. *Ibid*.

## 2000-C. LIABILITY OF A COMMON CARRIER FOR DELAY TO PROPERTY IN TRANSIT.

A carrier is not an insurer against delay in the transportation of goods.<sup>1</sup>

It is the duty of a carrier to safely carry and promptly deliver to the consignee the goods entrusted to its care for transportation.<sup>2</sup>

It is the duty of a railroad company engaged as a common carrier, whenever it receives freight to be transported, to carry it without unnecessary delay.<sup>3</sup> If damage results from failure, without good excuse, to deliver the goods at their destination within a reasonable time, the carrier is liable for such damage.<sup>4</sup>

The question of reasonable time is one of fact, and may be determined by the length of the journey, the modes of conveyance, the season of the year, the state of the weather, and any other circumstances which may properly be taken into consideration by the jury in finding whether the carrier has been guilty of improper delay.<sup>5</sup>

The difference between the market value of the property in the condition in which it should have arrived at the place of destination, and the market value in the condition in which, by reason of the fault of the carrier, it did arrive, is the measure of the shipper's damage.<sup>6</sup>

Where damages are sought to be recovered on account of delay in shipment, the delay must be the proximate cause of the loss or injury complained of.<sup>7</sup> According to the weight of authority the rule is that, if the loss or injury complained of would have occurred notwithstanding the goods had been shipped in a reasonable time, the carrier is not liable.<sup>8</sup>

If, however, the negligent delay occasions the ultimate injury which results from the goods not reaching their destination in time, the carrier is liable although the loss does not directly result while the goods are in its possession.<sup>9</sup>

Where goods are tendered to a carrier for transportation, it is bound to advise the shipper as to any cause likely to delay transportation; which cause is within its knowledge, or within its fair and reasonable means of knowledge, and not within the knowledge of the shipper; and, if it fails in its duty in this respect, a delay in the transportation of the goods will not be excused.<sup>10</sup>

The rule supported by the weight of authority is, that if the carrier has a reasonable equipment for all ordinary purposes, and a delay is occasioned by an unusual press of business, but the carrying is done with reasonable expedition under the circumstances, then it is not responsible for the delay.<sup>11</sup> A carrier can excuse itself for delay on account of unusual press of business only by showing that it has made the best practicable use of its means of transportation.<sup>12</sup>

Extraordinary weather conditions, such as floods, snow storms, and the like, will ordinarily constitute a sufficient excuse for delay in transportation.<sup>13</sup>

Where the loss is due to depredations or acts of violence of mobs, robbers, strikers, or other bodies of men not organized or operating as a military force against the government, the carrier is liable.<sup>14</sup> The carrier is liable for negligent or wrongful acts of its servants during the course of their employment, and, therefore, if its employees go on a strike, abandoning the performance of their duties and causing delay in the transportation of goods in their charge or control, the carrier is liable, the delay being due to the employees' wrongful acts.<sup>15</sup>

1. *Southern P. Co. v. Arnett*, (1903), 126 Fed. Rep. 75, 61 C. C. A. 131; *Farmers' Loan & Trust Co. v. Northern P. Ry. Co.*, (1903), 120 Fed. Rep. 873, 57 C. C. A. 533; affirmed, *Northern P. Ry. Co. v. American Trading Co.*, (1904), 195 U. S. 439, 25 Sup. Ct. Rep. 84, 49 L. Ed. 269.

2. *President, etc. Bank of Kentucky v. Adams Express Co.*, (1876), 23 L. Ed. 872, 875, 93 U. S. 174.



3. *Ormsby v. Union P. Rd. Co.*, (1880), 4 Fed. Rep. 706.
4. *Ibid.*
5. *Helliwell v. Grand Trunk Ry. Co. of Canada*, (1881), 7 Fed. Rep. 68, 73, 10 Biss. 170.
6. *Gulf, C. & S. F. Ry. Co. v. Texas Packing Co.*, (1917), 244 U. S. 31, 37 Sup. Ct. Rep. 487, 61 L. Ed. 970, 972; citing *New York, L. E. & W. Rd. Co. v. Estill*, (1893), 37 L. Ed. 292, 304, 147 U. S. 591, 616, 13 Sup. Ct. Rep. 444.
7. *Marine Insurance Co. v. St. Louis, I. M. & S. Ry. Co.*, (1890), 41 Fed. Rep. 643.
8. *St. Louis, I. M. & S. Ry. Co. v. Commercial Union Insurance Co.*, (1891), 139 U. S. 223, 11 Sup. Ct. Rep. 554, 35 L. Ed. 154; *United States v. Cornell Steamboat Co.*, (1905), 137 Fed. Rep. 457, 77 C. C. A. 601; affirmed, *Empire State Cattle Co. v. Atchison, T. & S. F. Ry. Co.*, (1908), 210 U. S. 1, 28 Sup. Ct. Rep. 607, 52 L. Ed. 931.
9. *The Caledonia*, (1888), 50 Fed. Rep. 567; affirming, *The Caledonia*, (1890), 43 Fed. Rep. 681; affirmed, *The Caledonia*, (1895), 157 U. S. 124, 15 Sup. Ct. Rep. 537, 39 L. Ed. 644.
10. *Bussey v. Memphis & L. R. Ry. Co.*, (1882), 13 Fed. Rep. 330; *Helliwell v. Grand Trunk Ry. Co. of Canada*, *supra*.
11. *Thomas v. Wabash, St. L. & P. Ry. Co.*, (1894), 63 Fed. Rep. 200; affirmed, *Thomas v. Lancaster Mills*, (1896), 71 Fed. Rep. 481, 19 C. C. A. 88; *Marine Ins. Co. v. St. Louis, I. M. & S. Ry. Co.*, *supra*; *Helliwell v. Grand Trunk Ry. Co. of Canada*, *supra*.
12. *Orrusby v. Union P. Rd. Co.*, *supra*.
13. *Missouri, K. & T. Ry. Co. v. Truskett*, (1900), 104 Fed. Rep. 728, 44 C. C. A. 179; affirmed, *Missouri, K. & T. Ry. Co. v. Truskett*, (1902), 186 U. S. 480, 22 Sup. Ct. Rep. 943, 46 L. Ed. 1259.
14. *Sherman v. Pennsylvania Rd. Co.*, 21 Fed. Cases No. 12769.
15. *Ibid.*

## 2000-P. EXEMPTION OF COMMON CARRIER FROM LIABILITY FOR LOSS OR DAMAGE TO PROPERTY CAUSED BY THE ACT OF GOD.

An act of God is a justification for failure of a carrier to perform the contract of carriage and relieves it of the liability for the loss of, or injury to, the goods concerned.<sup>1</sup> The term "act of God," as used to express a cause of loss or damage, for the consequences of which the carrier will not be liable, is very generally held to mean some casualty not due to human agency. It means the action of the forces of nature, in opposition to the act of man, such as lightning, storms, earthquakes, and the like.<sup>2</sup>

Where a shipment is caught in a flood of so unusual a character as to constitute an act of God, the carrier is not relieved of all liability, but is bound to exercise reasonable diligence to save the shipment or prevent additional loss.<sup>3</sup>

A flood on May 30th and 31st, 1903, at the junction of the Kaw and Missouri Rivers, at Kansas City, Mo., was an act of God, and the carrier was not liable for loss of freight in such flood.<sup>4</sup>

Where goods are lost by a common carrier in transit, the carrier has the burden of showing that the loss resulted from some cause for which the carrier was not responsible by law or by contract.<sup>5</sup>

Where goods are injured or a shipment lost through the joint influence of the carrier's negligence and act of God, a carrier is not relieved from liability.<sup>6</sup>

In *Lysaght, Ltd. v. Lehigh V. Rd. Co.* Mr. District Judge Learned Hand stated: "The question, therefore, becomes whether the 'federal law' as so understood excused the defendant in such circumstances as the pleas allege. That the explosion of the substances carried by the defendant can be regarded as in any sense an 'act of God' cannot be supported, as that phrase has always been understood. They were inherently unstable compounds, not combined by spontaneous processes of nature, but under human direction, and from no point of view could the release of energy attendant upon their resumption of stable chemical conditions fall within the definition of that phrase.

Even though the conventional limits of an 'act of God' be vague and irrational, and though there may be still some latitude for interpretation which did not seek to make the definition turn upon the degree of violence of the elements, there is a clear difference between the acts of the elements which all must endure, and the results of human contrivance like this. If it be urged that the affinity of the dissociated atoms of an unstable chemical compound be a force of nature, the fact is true; but it is quite irrelevant, for the laws of nature attend every action of man, including even the operation of his consciousness. The distinction was devised, not for chemists, but for common men, and must be read in their terms. So viewed, the elements had nothing to do with the calamity, but only the hand of man. Nor can the damage be attributed to any 'vice' of the plaintiff's goods, however that word be construed. They were injured by the 'vice' of other goods in the carrier's or others' custody, and not by their own."

Compliance by a carrier in the carriage of war munitions with the requirements of Criminal Code, Sections 232-235, does not affect its civil liability in respect to loss or damage to property of other shippers through an explosion of such munitions.<sup>8</sup>

1. *The Ship Maggie Hammond v. Morland, et al.*, (1870), 19 L. Ed. 772, 9 Wall. 435; *Ames Mercantile Co. v. Kimball S. S. Co.*, (1903), 125 Fed. Rep. 332; *Pacific Coast S. S. Co. v. Bancroft-Whitney Co.*, (1899), 94 Fed. Rep. 180, 36 C. C. A. 135; *Strouss v. Wabash, St. L. & P. Ry. Co.*, (1883), 17 Fed. Rep. 209.
2. *Dibble v. Morgan*, 7 Fed. Cases No. 3881, 1 Woods 406; *Tompkins v. Duchess of Ulster*, 24 Fed. Cases No. 141087-A.
3. *Chicago & E. I. Rd. Co. v. Collins Produce Co.*, (1916), 235 Fed. Rep. 857, 149 C. C. A. 169; affirmed, *Chicago & E. I. Rd. Co. v. Collins Produce Co.*, (1919), 249 U. S. 185, 63 L. Ed. 552, 39 Sup. Ct. Rep. 189.
4. *Empire State Cattle Co. v. Atchison, T. & S. F. Ry. Co.*, (1905), 135 Fed. Rep. 135; affirmed, *Empire State Cattle Co. v. Atchison, T. & S. F. Ry. Co.*, (1906), 147 Fed. Rep. 457; affirmed, *Empire State Cattle Co. v. Atchison, T. & S. F. Ry. Co.*, (1908), 210 U. S. 1, 28 Sup. Ct. Rep. 607, 52 L. Ed. 931.
5. *Chicago & E. I. Rd. Co. v. Collins Produce Co.*, supra.
6. *Ibid.*
7. *Lysaght, Ltd. v. Lehigh V. Rd. Co.*, (1918), 254 Fed. Rep. 351; affirmed, *Lehigh V. Rd. Co. v. Lysaght, Ltd.*, (1921), 271 Fed. Rep. 906.
8. *Ibid.*

#### 2000-E. EXEMPTION OF COMMON CARRIER FROM LIABILITY FOR LOSS OR DAMAGE TO PROPERTY CAUSED BY THE PUBLIC ENEMY.

Destruction or conversation by military forces of a public enemy, or by pirates, who are deemed to be public enemies of all nations, is universally mentioned as within the exceptions of the carrier's liability.<sup>1</sup>

But few actual adjudications applying to this exception are found save those arising out of the destruction of goods in the carrier's possession by military operation during the Civil War in the United States. In these cases it was held that, as to goods in the possession of a common carrier operating within territory under the control of the Federal Government, a destruction by the Confederate forces was a destruction by the public enemy, for which the carrier would not be responsible.<sup>2</sup>

Where the loss is due to depredations or acts of violence of mobs, robbers, strikers, or other bodies of men not organized or operating as a military force against the Government, the carrier is liable.<sup>3</sup>

1. *Keppel v. Petersburg Rd. Co.*, 14 Fed. Cases No. 7722.
2. *Ibid.*
3. *Sherman v. Pennsylvania Rd. Co.*, 21 Fed. Cases No. 12769.



2000-F. EXEMPTION OF COMMON CARRIER FROM LIABILITY FOR LOSS OR DAMAGE TO PROPERTY CAUSED BY THE ACT OR NEGLIGENCE OF THE SHIPPER.

A common carrier is not responsible for injury to, or the destruction of, the property while in the course of transportation caused by some act of the owner.<sup>1</sup>

On the question of the effect of a misrepresentation by the shipper as to the value of the property on a claim for damage, the United States Supreme Court in *Wells, Fargo & Co. v. Neiman-Marcus Co.*,<sup>2</sup> per Mr. Justice Lurton, stated: "It is undoubtedly true that the principal defense upon which the defendants seem to have relied in the state court was, that by intentional misrepresentation the plaintiff had obtained a rate based upon a valuation of \$50, and that they had thereby secured transportation of the property for which they sue at a less rate than that named in the tariffs published and filed by the carrier, as required by the acts of Congress regulating commerce, and thus obtained an illegal advantage and caused an illegal discrimination forbidden by the acts referred to. But this defense rested upon the misrepresentation as to real value declared only in the carrier's receipt and therefore involved the consequences of the undervaluation by which an unlawful rate had been obtained. The question at last would be, Shall the shipper or owner recover nothing because of that misrepresentation, or only the valuation declared to obtain the rate upon which the goods were carried? The latter would seem to be the more reasonable and just consequence of the estoppel. The ground upon which the validity of a limitation upon a recovery for loss or damage due to negligence depends is that of estoppel.

"But it is a mistake to assume that the company did not rely upon the stipulation limiting a recovery in case of loss or damage to the value agreed upon or declared. In the 12th paragraph of its answer it asserted that, if liable at all, its liability 'should be limited at \$50, as provided in said contract of shipment, which \$50 has heretofore been tendered to plaintiff.' By its 8th and 9th assignments of error in the court of civil appeals, error was assigned upon the refusal of the trial court to hold that the defendants in error were estopped, by the valuation declared, to recover any amount in excess of \$50. The court of civil appeals, while not in express terms denying the validity of such a stipulation on limiting recovery, did so in effect, for it seems to have placed its judgment of affirmance upon the rule requiring the company's agent to ask the shipper to declare the value, and if no value is stated, that the package should be stamped, 'Value asked and not given.' This was not done. Therefore, said the court, 'the company's agent failed to perform a plain duty \* \* \* and it is in no attitude to complain that the shipper did not state the value.'

"But the shipper, in accepting the receipt reciting that the company 'is not to be held liable beyond the sum of \$50, at not exceeding which sum said property is hereby valued, unless a different value is hereinabove stated,' did declare and represent that the value did not exceed that sum, and did obtain a rate which he is to be assumed to have known was based upon that as the actual value. There is no substantial distinction between a value stated upon inquiry, and one agreed upon or declared voluntarily. The rate of freight was based upon the valuation thus fixed, and the liability should not exceed the amount

so made the rate basis. *Hart v. Pennsylvania R. Co.*, 112 U. S. 331, 338, 28 L. ed. 717, 720, 5 Sup. Ct. Rep. 151."

It has been held that where money entrusted to a carrier for transportation, and stolen by its agent, is recovered by the carrier, it will be liable therefore, notwithstanding the fraudulent acts on the part of the shipper by reason of which only ordinary care was used by the carrier in its transportation.<sup>3</sup>

With reference to improper packing, many decisions apparently hold without qualification that the full duty of the carrier is simply to carry goods in the condition in which they are offered, and that, where goods tendered was insufficiently packed, the carrier is not liable for loss or damage due to such defect, whether the defect in the packing is latent or not.<sup>4</sup>

However, the foregoing view has not met with universal approval, and a number of decisions hold that the carrier, being entitled to reject defectively packed goods tendered for shipment, if it accepts for transportation goods which it knows are defectively packed, or which by the exercise of reasonable care it could have observed were defectively packed, it assumes to carry the goods as they are and its common-law liability as carrier attaches, and it is subject to all the liabilities usually attaching to an ordinary shipment of the same character.<sup>5</sup>

If the loss of the goods, or delay or injury, due to the inherent nature of the goods, resulting from delay, is due to improper packing or direction as to their destination, the carrier is not liable.<sup>6</sup>

The fact that the shipper may have been negligent in marking the goods shipped is no defense to a suit against the carrier for its conversion of the goods.<sup>7</sup>

On the question of improper loading, the United States Supreme Court in the case of *Hannibal & St. J. Rd. Co. v. Swift*<sup>8</sup> per Mr. Justice Field, stated: "In all such cases the liability of the common carrier attaches when the property passes, with his assent, into his possession, and is not affected by the car in which it is transported, or the manner in which the car is loaded. The common carrier is regarded as an insurer of the property carried, and upon him the duty rests to see that the packing and conveyance are such as to secure its safety. The consequences of his neglect in these particulars cannot be transferred to the owner of the property."

1. *Choate v. Crowninshield*, 5 Fed. Cases No. 2691, 3 Cliff. 184.

2. *Wells, Fargo & Co. v. Neiman-Marcus Co.*, (1913), 227 U. S. 469, 33 Sup. Ct. Rep. 267, 57 L. Ed. 600, 602, et seq. See also, *New York C. & H. R. Rd. Co. v. Olga De Maluta Fraloff*, (1879), 25 L. Ed. 531, 100 U. S. 24.

3. *St. John v. Southern Express Co.*, 22 Fed. Cases No. 12228, 1 Woods 612.

4. *Zerega v. Poppe*, 30 Fed. Cases No. 18213.

5. *David & Carolyn*, 7 Fed. Cases No. 3593, 5 Blatch, 266.

6. *The Huntress*, 12 Fed. Cases No. 6914, 2 Ware 89.

7. *Downing v. Auterbridge*, (1897), 79 Fed. Rep. 931, 25 C. C. A. 244.

8. *Hannibal & St. J. Rd. Co. v. Swift*, (1871), 79 U. S. 262, 273, 20 L. Ed. 423.

#### 2000-G. EXEMPTION OF COMMON CARRIER FROM LIABILITY FOR LOSS OR DAMAGE TO PROPERTY CAUSED BY THE PUBLIC AUTHORITY.

The mere declaration of martial law in a district will not relieve a common carrier operating therein of all liability to the shipper.<sup>1</sup>

Where martial law was declared in a flood district and at the suggestion and instigation of the carrier a shipment of chickens was



appropriated by the military authorities, the carrier, having caused the appropriation, cannot defeat recovery by the shipper on the ground that there was a confiscation.<sup>2</sup>

Where a shipment of chickens in possession of a carrier which was caught in a flood and held up was confiscated by military authorities, martial law being declared in the district, in such a manner as to free the carrier from responsibility, *held* under the evidence for the jury.<sup>3</sup>

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1. *Chicago & E. I. Rd. Co. v. Collins Produce Co.*, (1916), 235 Fed. Rep. 858, 149 C. C. A. 169, affirmed, *Chicago & E. I. Rd. Co. v. Collins Produce Co.*, (1919), 249 U. S. 186, 39 Sup. Ct. Rep. 189, 63 L. Ed. 552.

2. *Ibid.*

3. *Ibid.*

#### 2000-H. EXEMPTION OF COMMON CARRIER FROM LIABILITY FOR LOSS OR DAMAGE TO PROPERTY CAUSED BY THE INHERENT VICE OR NATURE OF THE GOODS.

Where the destruction or injury to the goods is due to their inherent nature and qualities or to defects therein, the carrier is not liable, if its own negligence did not occasion or contribute to the injury.<sup>1</sup>

In the case of live stock, if the loss or injury is due to the inherent nature, propensities, habits, disposition, and condition of the animals, the carrier is not liable.<sup>2</sup>

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1. *The Ship Howard v. Wissman*, (1856), 18 How., 231, 15 L. Ed. 363; *Janney v. Tudor Co.*, (1880), 3 Fed. Rep. 814; *Lamb v. Parkman*, 14 Fed. Cases No. 8020, 1 Sprague 343.

2. *Webster v. Union P. Rd. Co.*, (1872), 200 Fed. Rep. 597.

#### 2000-I. NECESSITY THAT THE EXCEPTED CAUSE CLAIMED AS A DEFENSE BY THE CARRIER BE THE PROXIMATE CAUSE OF THE LOSS OR INJURY COMPLAINED OF.

Where the carrier relies on one of the exceptions to his common-law liability, it must appear, in order to excuse him, that the exceptional cause, such as an act of God, or the like, was the immediate or proximate, and not the remote, cause of the loss.<sup>1</sup>

In *Jahn v. Steamship Folmina*<sup>2</sup> the United States Supreme Court, per Mr. Justice White, stated: "It was long since settled in *Clark v. Barnwell*, 12 How. 272, 13 L. ed. 985, that where goods are received in good order on board of a vessel under a bill of lading agreeing to deliver them, at the termination of the voyage, in like good order and condition, and the goods are damaged on the voyage, in a proceeding to recover for the breach of the contract of affreightment, after the amount of damage has been established, the burden lies upon the carrier to show that it was occasioned by one of the perils for which he was not responsible. But, as illustrated in the case of *The G. R. Booth*, 171 U. S. 450, 43 L. ed. 234, 19 Sup. Ct. Rep. 9, proof merely of damages to cargo by sea water does not necessarily tend to establish that such damage was caused by a peril or danger of the seas. In that case the facts were that the explosion of a case of detonators, which were part of a cargo, burst open the side of the ship below the water line, and the sea water, rapidly flowing in through the opening made by the explosion, injured the plaintiff's sugar. It was held that although

the explosion and the inflow of the water were concurrent causes of the damage, yet 'the explosion, and not the sea water, was the proximate cause of damage, and that this damage was not occasioned by the perils of the sea within the exceptions in the bill of lading.' As well observed by counsel in the agreement at bar, the efficient cause of the damage sustained by the rice on board the *Folmina* must be sought in those conditions or events which caused or permitted the entrances of sea water. It cannot in reason be said that sea water was the efficient, the proximate cause of the cargo damage, because no other cause for that damage has been disclosed. As there must have been an efficient cause permitting the sea water to enter, so long as that cause remains undisclosed it cannot be said that the damage has been shown to have resulted from causes within the scope of a sea peril. Of course, where goods are delivered in a damaged condition plainly caused by breakage, rust, or decay, their condition brings them within an exception exempting from that character of loss, as the very fact of the nature of the injury shows the damage to be *prima facie* within the exception, and hence the burden is upon the shipper to establish that the goods are removed from its operation because of the negligence of the carrier. But, in a case like the one before us, where showing an injury by sea water does not, in and of itself, operate to bring the damage within the exception against dangers and accidents of the sea, it follows that it is the duty of the carrier to sustain the burden of proof by showing a connection between damage by the sea water and the exception against sea perils. For the distinction between the two, see *The Henry B. Hyde*, 32 C. C. A. 534, 61 U. S. App. 147, 90 Fed. 114, 116; *The Lennox*, 90 Fed. 308, 309; *The Patria*, 68 C. C. A. 397, 132 Fed. 971, 972."

In *Memphis Rd. Co. v. Reeves*<sup>3</sup> the United States Supreme Court, per Mr. Justice Miller, stated: "We are of opinion, then, that both the refusal to charge as requested and the charge actually given are properly before us for examination. As regards the first, we will only notice one of the rejected instructions, the fourth. It was prayed in these words:

" 'When the damage is shown to have resulted from the immediate act of God, such as a sudden and extraordinary flood, the carrier would be exempt from liability, unless the plaintiff shall prove that the defendant was guilty of some negligence in not providing for the safety of the goods. That he could do so must be proven by the plaintiff, or must appear in the facts of the case.' "

"It is hard to see how the soundness of this proposition can be made clearer than by its bare statement. A common carrier assumes all risks except those caused by the act of God and the public enemy. One of the instances always mentioned by the elementary writers of loss by the act of God is the case of loss by flood and storm. Now, when it is shown that the damage resulted from this cause immediately, he is excused.

"What is to make him liable after this? No question of his negligence arises unless it is made by the other party. It is not necessary for him to prove that the cause was such as releases him, and then to prove affirmatively that he did not contribute to it. If, after he has excused himself by showing the presence of the overpowering cause,



it is charged that his negligence contributed to the loss, the proof of this must come from those who assert or rely on it."

It is generally declared that, if the negligence of the carrier concurs with an act of God in producing a loss or injury, the carrier is not exempted from liability by showing that the immediate cause was the act of God, or some other excepted cause; or, as otherwise, expressed, the carrier is responsible where the loss is caused by an act of God or other excepted cause, if the carrier's negligence mingles with it as an active and co-operative cause.<sup>4</sup>

Where a railway company agreed with a compress company to receive and transport all cotton brought by its owners to the compress company, the railway company is not liable to the owners or insurers of such cotton for its destruction by fire, it having accumulated by reason of the delay of the railway company to furnish the transportation, the neglect of the company to furnish transportation not being the direct and proximate cause of the loss by fire.<sup>5</sup>

Where there were two routes for sending goods by express, the one safe and the other hazardous, and yet the express company, in defiance of the wishes of the owner of the goods, rejects the safe and adopts the hazardous, and the goods are lost by robbery, the company is liable.<sup>6</sup>

In *Constable v. National Steamship Co.*<sup>7</sup> the United States Supreme Court, per Mr. Justice Brown, stated: "In law maritime a deviation is defined as a 'voluntary departure without necessity, or any reasonable cause, from the regular and usual course of the ship insured.' *Bouvier*, Law Dict. 417; *Hostetter v. Park*, 137 U. S. 30, 40, (34:568, 572); *Davis v. Garrett*, 6 Bing. 716; *William v. Grant*, 1 Conn. 487, 7 Am. Dec. 235, as, for instance, where a ship bound from New York to Norwich, Conn., went outside of Long Island, and lost her cargo in a storm (*Crosby v. Fitch*, 12 Conn. 410, 31 Am. Dec. 745) or where a carrier is guilty of unnecessary delay in pursuing a voyage, or in the transportation of goods by rail. *Michaels v. New York Cent. R. Co.*, 30 N. Y. 564, 86 Am. Dec. 415. But, if such deviation be a customary incident of the voyage, and according to the known usage of trade, it neither avoids a policy of insurance, nor subjects the carrier to the responsibility of an insurer. *Oliver v. Maryland Ins. Co.*, 11 U. S. 7 Cranch, 487 (3:414); *Columbian Ins. Co. v. Catlett*, 25 U. S. 12 Wheat. 383 (6:644). *Hostetter v. Park*, 137 U. S. 30 (34:568), it was held to be no deviation, in the Pittsburg and New Orleans barge trade, to land and tie up a tow of barges, and detach from the tow such barge or barges as were designated to take on cargo en route, and to tow the same to the several points where the cargo might be stored, it having been shown that such delays were within the general and established usage of the trade. So, in *Gracie v. Marine Ins. Co.*, 12 U. S. 8 Cranch, 75 (3:492), it was held to be no deviation to land goods at a lazaretto or quarantine station, if the usage of the trade permitted it, though by the bill of lading the goods were 'to be safely landed at Leghorn.' See also *Phelps v. Hill* (1891) 1 Q. B. 605."

Where it becomes necessary for the carrier, by reason of some emergency not contemplated at the time of shipment, to change the route or method of transportation, it will not be liable for subsequent loss or injury for which it is in general not responsible by law or by contract.<sup>8</sup>

Where, while goods received by the first carrier are in transit, the connecting line notifies it that it cannot receive the goods and transport them to their destination because of a block in freight, this will not relieve the first carrier from liability for damages caused by the delay, where it fails to notify the shipper and give him an opportunity to dispose of the property or take measures for its preservation."

In *Memphis & C. Rd. Co. v. Reeves*<sup>10</sup> the United States Supreme Court, per Mr. Justice Miller, stated: "The second instruction given by the court says that if, while the cars were so standing at Chattanooga they were submerged by a freshet which no human care, skill and prudence could have avoided, then the defendant would not be liable; but if the cars were brought within the influence of the freshet by the act of the defendant, and if the defendant or his agent had not so acted the loss would not have occurred, then it was not the act of God, and defendant would be liable. The fifth instruction given also tells the jury that if the damage could have been prevented by any means within the power of the defendant or his agents, and such means were not resorted to, then the jury must find for plaintiff.

"In contrast with the stringent ruling here stated, and as expressive of our view of the law on this point, we cite two decisions by courts of the first respectability in this country.

"In *Morrison v. Davis*, 20 Pa. St. 171, goods being transported on a canal were injured by the wrecking of the boat, caused by an extraordinary flood. It was shown that a lame horse used by defendants delayed the boat, which would otherwise have passed the place where the accident occurred in time to avoid the injury. The court held that the proximate cause of the disaster was the flood, and the delay caused by the lame horse the remote cause, and that the maxim, *causa proxima, non remota spectatur*, applied as well to contracts of common carriers as to others. The court further held, that when carriers discover themselves in peril by inevitable accident, the law requires of them ordinary care, skill, and foresight, which it defines to be the common prudence which men of business and heads of families usually exhibit in matters that are interesting to them.

"In *Denny v. R. R. Co.*, 13 Gray 481, the defendants were guilty of negligent delay of six days in transporting wool from Suspension Bridge to Albany, and while in their depot at the latter place a few days after, it was submerged by a sudden and violent flood in the Hudson River. The court says that the flood was the proximate cause of the injury, and the delay in transportation the remote one; that the doctrine we have just stated governs the liabilities of common carriers as it does other occupations and pursuits, and it cites with approval the case of *Morrison v. Davis, supra*.

"Of the soundness of this principle we are entirely convinced, and it is at variance with the general groundwork of the court's charge in this case."

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1. *Jahn v. Steamship Folmina* (1909), 212 U. S. 354, 20 Sup. Ct. Rep. 363, 53 L. Ed. 546; *Clark v. Barnwell*, (1851), 12 How. 272, 13 L. Ed. 985; *Memphis & C. Rd. Co. v. Reeves*, (1870), 10 Wall. 176, 19 L. Ed. 909; *King v. Shepherd*, 14 Fed. Cases No. 7804, 3 Storey 349; *Tompkins v. Duchess of Ulster*, 24 Fed. Cases No. 14087-A.

2. *John v. Steamship Folmina, supra*.

3. *Memphis & C. Rd. Co. v. Reeves*, (1870), 10 Wall. 176, 19 L. Ed. 909.

4. *Caldwell v. Southern Express Co.*, 4 Fed. Cases No. 2303, 1 Flipp. 85.



5. *St. Louis, I. M. & S. Ry. Co. v. Commercial Union Insurance Co.*, (1891), 139 U. S. 223, 11 Sup. Ct. Rep. 554, 35 L. Ed. 154. See, *Scheffer v. Washington City*, V. M. & G. S. Rd. Co., (1882), 105 U. S. 249, 26 L. Ed. 1070; *Memphis & C. Rd. Co. v. Reeves*, (1870), 10 Wall. 176, 19 L. Ed. 909, 10 Wall. 176; *Empire State Cattle Co. v. Atchison, T. & S. F. Ry. Co.*, (1905), 135 Fed. Rep. 135, affirmed, *Empire State Cattle Co. v. Atchison, T. & S. F. Ry. Co.*, (1906), 147 Fed. Rep. 457, 77 C. C. A. 601, affirmed, *Empire State Cattle Co. v. Atchison, T. & S. F. Ry. Co.*, (1908), 52 L. Ed. 931, 210 U. S. 1, 28 Sup. Ct. Rep. 607; *Thomas v. Lancaster Mills* (1896), 71 Fed. Rep. 481, 19 C. C. A. 88; *Chicago, St. P. M. & O. Ry. Co. v. Elliott*, (1893), 55 Fed. Rep. 949, 5 C. C. A. 347; *Scott v. Baltimore, C. & R. Steam-Boat Co.*, (1884), 19 Fed. Rep. 56.
6. *United States v. Kuntze Bros.*, (1869), 8 Wall. 342, 19 L. Ed. 457.
7. *Constable v. National Steamship Co.*, (1894), 154 U. S. 51, 38 L. Ed. 903, 911, 14 Sup. Ct. Rep. 1062.
8. *Empire State Cattle Co. v. Atchison, T. & S. F. Ry. Co.*, (1908), 210 U. S. 1, 28 Sup. Ct. Rep. 607, 52 L. Ed. 931.
9. *In Re Petersen*, (1884), 21 Fed. Rep. 885.
10. *Memphis & C. Rd. Co. v. Reeves*, (1870), 10 Wall. 176, 19 L. Ed. 909, 913. See, *The Maggie Hammond v. Morland*, (1870), 19 L. Ed. 772, 9 Wall. 435; *Pearce v. Thomas Newton*, (1889), 41 Fed. Rep. 106.

## 2000-J. COMMON-LAW LIABILITY OF THE INITIAL CARRIER FOR THE THROUGH TRANSPORTATION.

In *Smeltzer v. St. Louis & S. F. Rd. Co.*<sup>1</sup> Mr. District Judge Rogers stated: "But let us look further as to what obligations were assumed in the bill of lading sued on. Did this bill of lading obligate the initial carrier to deliver the shipment of fruit to the consignee in New York, or was it discharged from all responsibility when it delivered the fruit to the Big 4 railroad at St. Louis station? If its obligation required it to deliver the goods to the consignee at New York, is it not responsible to the shipper, independent of the Hepburn act without regard to where the loss occurred? It is a principle of law that no one can contract against his own negligence, and the carrier is the insurer of the goods in transit against everybody, except the act of God and the public enemy. 17 Wall. 357-381, 21 L. ed. 627. If the carrier undertakes to deliver the goods at a point requiring them to pass over connecting lines, are not such lines the carrier's agents, and why is not the carrier as much bound for its agent's negligence as for its own? The complaint and the bill of lading taken together show that the shipment of peaches was received by the defendant at Van Buren, Ark., consigned to Robert T. Cochran & Co. of New York, care of Big 4 and Empire line; that the freight and icing charges were agreed upon covering the shipment to the point of destination; that the fruit was to pass over defendant's line to St. Louis station, and there to be delivered to the Big 4 railroad, the initial carrier guaranteeing the rates and charges to point of destination. The right to transfer the fruit en route, when the necessities of any carrier required was reserved in the contract made with the initial carrier; the charges were to be paid by the consignee on arrival at New York. Let us examine this contract in the light of the adjudicated cases, and see what construction shall be placed upon such a bill of lading and how the question above suggested should be answered.

"In *Taylor, Cleveland & Company v. L. R. Miss. River & Texas R. R. Co.*, 32 Ark. 393, 29 Am. Rep. 1, the court said that the initial carrier can stipulate against liability for loss beyond its own line. *R. R. Co. v. Lockwood*, 17 Wall. 357, 21 L. Ed. 627. The facts in that case were very similar to those in this case. The common-law rule is exactly the reverse. *R. R. Co. v. Lockwood*, *supra*. In *Railroad Co. v. Lockwood*, Mr. Justice Bradley, whose erudition enabled him to adorn

any subject he treated, reviewed the decisions of a large number of the states, as well as the decisions and the course of legislation in England on this subject, and deduced therefrom, among other things, the following principles of law: First, a common carrier can stipulate against its common-law liability as long as the stipulations are reasonable and just, but it cannot stipulate against its own negligence, or that of its servants or agents; second, a common carrier cannot, by stipulation, lose its character generally as such and become a mere bailee; third, the federal courts are not bound by state decisions in this class of cases, it being a commercial question. That case did not involve the liability of an initial carrier beyond its own line; but the case of *R. R. Co. v. R. R. Co.*, 110 U. S. 688, 4 Sup. Ct. 185, L. ed. 291, does involve that very question, and the court said:

"At common law, a carrier is not bound to carry except on his own line, and we think clear that if he contracts to go beyond he may, in the absence of statutory regulations to the contrary, determine for himself what agencies he will employ. His contract is equivalent to an extension of his line for the purpose of the contract, and if he holds himself out as a carrier beyond the line, so that he may be required to carry in that way for all alike, he may nevertheless confine himself in carrying to the particular route he chooses to use. He puts himself in no worse position, by extending his route with the help of others, than he would occupy if the means of transportations employed were all his own. He certainly may select his own agencies and his own associates for doing his own work."

"In *Railroad Co. v. Pratt*, 22 Wall. 123, 22 L. ed. 827, the suit was brought in Massachusetts by attachment, against the Ogdensburg & Lake Champlain R. R. Co., a New York corporation, which was the initial carrier, to recover from that company damages for the loss of certain horses shipped by plaintiff, who had put them in two cars of defendant company in New York, and which were burned to death, not on the defendant's road, but on the Vermont Central Railroad, a Vermont corporation connecting with the former, but not belonging to the same corporation. The Vermont railroad, near the southeastern boundary of Vermont, connected with another road which entered Boston. The horses were shipped from Potsdam, N. Y., to Boston, over these three roads. The contract price was \$85 per car to Boston, and the contract itself is substantially the same as the one in this case, except there seems to have been no express contract limiting the liability to the road on which the loss occurred. The fire which burned the cars resulted from a defective roof on the cars, which permitted the sparks to ignite the hay placed in them for the horses to stand on. The court said:

"First. As to the power of the railroad company to contract as a common carrier for the transportation of property beyond the terminus of its own road. The distinction between the liability of a carrier, in carrying goods upon its own line, and in forwarding them when the duty to carry is at an end, is well defined. In the language of Mr. Justice Davis, in *Railroad Company v. Manufacturing Company*, "It is the duty of the carrier, in the absence of any special contract, to carry safely to the end of his line, and to deliver to the next carrier in the route beyond. \* \* \*" The fair result of the American cases limits the carrier's liability as such, when no special contract is made, to his own line, although there are cases which hold the liability as continuing the same throughout the whole route, and such is the English doctrine. A discussion on this point is unnecessary, as the judge on the trial held the rule as we have stated it, and as was most favorable to the defendants. He charged the jury that the defendants were only liable upon a contract to be proved that they had assumed a liability beyond that imposed by law. \* \* \* Assuming the case to stand upon the general principles applicable to the question, the doctrine that a railroad company may subject itself to the obligations of a carrier beyond its own line has been distinctly held in the state of New York, where this contract was made; in the state of Massachusetts, where its performance was to be completed; and in the state of Vermont, where the alleged injury occurred, the case of *Curtis v. Buffalo & St. Lawrence Railroad*, 24 N. Y. 269, it was held that this principle applied to connecting roads extending beyond the limits of the state. The single exception to this holding so far as we are aware, is in the state of Connecticut, where the contrary has been held by its Supreme Court. This case, however, does not stand upon the general principle only. By the statutes of New York it is enacted as



follows: "Any railroad company receiving freight for transportation shall be entitled to the same rights and subject to the same responsibilities as common carriers. Whenever two or more railroad companies are connected together, any company owning either of said roads receiving freight to be transported to any place on the line of either of said roads so connected shall be liable as common carriers for the delivery of such freight at such place. In case any such company shall become liable to pay any sum by reason of the neglect of any other company or companies, the company paying such sum may collect the same of the company by whose neglect it became so liable." This statute is declared by Rapallo, J., in *Root v. Great Western Railroad*, 45 N. Y. 524, to be declaratory merely. We do not see that there is room to doubt the power of the company to make the contract in question.'

"So here, I think the act declaratory merely, as to this precise point. The court then considered the question whether there was evidence to show that the initial carrier contracted to transport the horses beyond its own terminus, and over other roads, to Boston. There was oral evidence, and the waybill was also introduced. The court said:

"This evidence shows that the oral engagement was "to carry his horses to Boston," not to carry to Rouse's Point and thence to forward to Boston, but, "to carry" as well and as fully over the Vermont and Massachusetts roads as over the Ogdensburg road. Again, a specific price was agreed upon for transportation over the whole route. This was in accordance with the practice, and whether paid at Potsdam or at Boston was unimportant. This practice had been continued for years, and the jury had the right to hold the contract to be the same, without reference to prepayment or postpayment. The Jury were justified in inferring that where a carrier fixes a price for transportation over the whole route, that he makes the entire contract his own. One who carries simply over his own line, and thence forwards by other lines, would ordinarily, the jury may say, make or collect his own charges and leave the remaining charges to be collected by those performing the remaining service. Receipt of the entire pay affords a fair presumption of an entire contract. The language of the waybill is quite expressive. It describes "merchandise transported \* \* \* from Potsdam to Boston." "Transported" or "carried" are equivalent terms, and quite distinct from the idea of forwarding. Whether looked upon as a contract, or as a declaration, or as an admission simply, the way bill furnishes evidence that the Ogdensburg Company undertook to carry the horses to Boston. In *Root v. Great Western*, in speaking of the contract to transport as a common carrier over other lines, the court say: "Such an undertaking may be established by express contract, or by showing that the company held itself out as a carrier for the entire distance, or received freight for the entire distance, or other circumstances indicating an understanding that it was to carry through." We think there was competent evidence before the jury that the company undertook to carry this property to Boston, and the jury having found such to be the fact, the other companies are to be deemed the agents of the defendants, for whose faults they are responsible.'

"The question is considered, then, whether the Vermont road was the agent of the initial carrier, and the court said:

"The authorities sustain the position taken by the judge at the trial. In *New Jersey Steam Navigation Company v. Merchants Bank*, 6 How. 344, 12 L. Ed. 465, Mr. Justice Nelson says: "If it is competent at all for the carrier to stipulate for the gross negligence of himself and servants or agents in the transportation of goods, it should be required to be done at least in terms that would leave no doubt as to the meaning of the parties." To this effect are the New York and Massachusetts cases before cited. In *Railroad Company v. Manufacturing Company*, 16 Wall. 318, 21 L. Ed. 297, it was declared that the court did not intend to relax the rule by which the liability of carriers were established. In *Railroad Company v. Lockwood* the following, among other propositions, were reiterated and established by the unanimous judgment of the court. (1) That a common carrier cannot lawfully stipulate for exemption from responsibility when such exemption is not just and reasonable in the eye of the law. (2) That it is not just and reasonable in the eye of the law for a common carrier to stipulate for exemption from responsibility when such exemption is not just and reasonable in the eye of the law. (2) That it is not just and reasonable in the eye of the law for a common carrier to stipulate for exemption from responsibility for the negligence of himself or his servants. The judge at the trial of this case might have gone much further than he did, and have charged that if the jury found the company to have been negligent and careless in furnishing cars, they would not be relieved from responsibility, although there had been an agreement that they should not be liable therefor.'

"*Bank of Kentucky v. Adams Express Company*, 93 U. S. 174, 23 L. Ed. 872, is a case strongly in point. The Southern Express Company had received in New Orleans, La., two packages of money to be delivered to certain banks in Louisville, Ky. That company conveyed the packages to Humboldt, Tenn., and delivered them to Southern Express Company between Humboldt and Louisville. By reason of the negligence of the railroad company over which the packages were being carried, a trestle gave way, the car was precipitated below, the mes-

senger disabled, and the packages burned by fire which started from the locomotive. The ordinary agreement between the express company and the railroad company for transporting express matter subsisted, and the two express companies were shown to be engaged in transporting the packages from New Orleans to Louisville, Ky. The question was whether the railroad company was the agent of the express company and therefore the express company liable, or was the railroad liable because of its own negligence to which the loss was directly attributable. The court said:

"The railroad company, in transporting the messenger of the defendants and the express matter in his charge, was the agent of somebody; either of the express company, or of the shippers or consignees of the property. That it was the agent of the defendants is quite clear. It was employed by them and paid by them. The service it was called upon to perform was a service for the defendants; a duty incumbent upon them, and not upon the plaintiffs. The latter had nothing to do with the employment. It was neither directed by them, nor had they any control over the railroad company or its employes. It is true the defendants had also no control over the company or its servants; but they were its employers, presumably they paid for its service; and that service was directly and immediately for them. Control of the conduct of an agency is not in all cases essential to liability for the consequences of that conduct. If any one is to be affected by the acts or omissions, of persons employed to do a particular service, surely it must be he who gave the employment. Their acts become his, because done in his service and by his direction. Moreover, a common carrier who undertakes for himself to perform an entire service has no authority to constitute another person or corporation the agent of his consignor or consignee. He may employ a subordinate agency; but it must be subordinate to him, and not to one who neither employs it nor pays it, nor has any right to interfere with it."

"The court held the express companies liable saying:

"Public policy demands that the right of the owners to absolute security against the negligence of the carrier, and of all persons engaged in performing the carrier's duty, shall not be taken away by any reservation in the carrier's receipt, or by any arrangement between him and the performing company."

"This doctrine is ably fortified by the case of *Nashua Lock Company v. Worcester and Nashua Railroad Company*, 48 N. H. 339, 2 Am. Rep. 242. The opinion was delivered in 1869. In that case the authorities in England and America are collated, considered, and weighed in the light of reason and authority, and the convenience and necessities of commerce at that day, and the conclusion is this:

"Where several common carriers are associated in a continuous line of transportation, and, in the course of the business, goods are carried through the connected line for one price under an agreement by which the freight money is divided among the associated carriers, in proportions fixed by the agreement; if the carrier at one end of the line receives goods to be transported though marked for a consignee at the other end of the line, and on delivery of the goods takes pay for transportation through, the carrier who so receives the goods is bound to carry them, or see that they are carried to their final destination, and is liable for an accidental loss happening in any part of the connected line."

"I need not multiply authorities, or take up further time in this matter. This court is bound by the cases in 110 U. S. 688, 4 Sup. Ct. 185, 22 L. Ed. 291 and 22 Wall. 123, 22 L. Ed. 827, and the case in 48 N. H. 339, 2 Am. Rep. 242, has his unqualified approval.

"In the case at bar the bill of lading contains this provision:

"When the words 'Owners Risk' or the letters 'O. R.' are noted on this bill of lading, the shipper assumes the risk of all loss or damage to the property in the course of transportation, except that arising from carelessness of the carrier, its agents or employes."

"It will thus be seen that there was no effort in this case on the part of the initial carrier to contract against its own carelessness, or that of its agents or employes. I conclude that *prima facie* the Big 4 and the Empire lines were, under this contract as it now appears of record, the agents of the defendant, and that it could not contract against its liability for the negligence of its own agents, and that the



seventh section of the act of June 29, 1906, strikes down the provision in the bill of lading exempting the defendant from liability for loss occurring on the lines of its agents or connecting carriers.

"In *Minnesota Iron Co. v. Kline*, 199 U. S. 593-598, 26 Sup. Ct. 159, 50 L. Ed. 322, that court said:

"It was not argued that the statute was bad as interfering unduly with freedom of contract. There is no doubt that that freedom may be limited where there are visible reasons of public policy for the limitation. *Holden v. Hardy*, 169 U. S. 366-391, 18 Sup. Ct. 388, 42 L. Ed. 780."

"Instances of this may be found under the decisions based on state statutes. *Hooper v. California*, 155 U. S. 648, 15 Sup. Ct. 207, 39 L. Ed. 297; *Holden v. Hardy*, 169 U. S. 366, 18 Sup. Ct. 388, 42 L. Ed. 780; *Orient Ins. Co. v. Daggs*, 172 U. S. 557, 19 Sup. Ct. 281, 43 L. Ed. 552; *Ozan Lbr. Co. v. Union Co. Nat. Bank of Ind.* (1907), 207 U. S. 251, 28 Sup. Ct. 89, 52 L. ed. 195."

In *Atlantic C. L. Rd. Co. v. Riverside Mills*<sup>2</sup> the United States Supreme Court, per Mr. Justice Lurton, stated: "Independently of the Carmack amendment the carrier, when tendered property for such transportation, might elect to contract to carry to destination, in which case it necessarily agreed to do so through the agency of other and independent carriers in the line; or, it might elect to carry safely over its own lines only, and then deliver to the next carrier, who would then become the agent of the shipper. In the first case the receiving carrier's liability as carrier extends over the whole route, for, on obvious grounds, the principal is liable for the acts of its agent. In the other case its carrier liability ends at its own terminal, and its further liability is merely that of a forwarder. Having this power to make the one or the other contract, the only question which has occasioned a conflict in the decided cases was whether it, in the particular case, made the one or the other.

"The general doctrine accepted by this court, in the absence of legislation, is, that a carrier, unless there be a special contract, is only bound to carry over its own line, and then deliver to a connecting carrier. That such an initial carrier might contract to carry over the whole route was never doubted. It is equally indisputable that if it does so contract, its common-law carrier liability will extend over the entire route. *Ohio & M. R. Co. v. McCarthy*, 96 U. S. 258, 266, 24 L. ed. 693, 696; *Ogdensburg & L. C. R. Co. v. Pratt*, 22 Wall. 123, 22 L. Ed. 827; *Northern P. R. Co. v. American Trading Co.*, 195 U. S. 439, 49 L. ed. 269, 25 Sup. Ct. Rep. 84; *Muschamp v. Lancaster & P. R. Co.*, 8 Mees. & W. 421.

"The English cases beginning with *Muschamp v. Lancaster P. R. Co.*, *supra*, decided in 1841, down to *Bristol & E. R. Co. v. Collins*, 7 II. L. Cas. 194, have consistently held that the mere receipt of property for transportation to a point beyond the line of the receiving carrier, without any qualifying agreement, justified an inference of an agreement for through transportation, and an assumption of full carrier liability by the primary carrier. The ruling is grounded upon considerations of public policy and public convenience, and classes the receipt of goods so designated for a point beyond the carrier lines as a holding out to the public that the carrier has made its own arrangements for the continuance by a connecting carrier of the transportation after the goods leave its own line. There are American cases which take the same view of the question of evidence thus presented. Some of them

are *Louisville & N. R. Co. v. Campbell*, 7 Heisk, 257; *Alabama & G. S. R. Co. v. Mt. Vernon Co.*, 84 Ala., 175, 4 So. 356; *Central R. Co. v. Hasselkus*, 91 Ga. 384, 44 Am. St. Rep. 37, 17 S. E. 838; *Beard v. St. Louis A. & T. H. R. Co.*, 79 Iowa, 531, 44 N. W. 803; *Kyle v. Laurens R. Co.*, 10 Rich. L. 382, 70 Am. Dec. 231; *Erie R. Co. v. Wilcox*, 84 Ill. 240, 25 Am. Rep. 451; *East Tennessee & V. R. Co. v. Rogers*, 6 Heisk, 143, 19 Am. Rep. 589.

“Upon the other hand, many American courts have repudiated the English rule which holds the carrier to a contract for transportation over the whole route, in the absence of a contract clearly otherwise, and have adopted the rule that unless the carrier specifically agrees to carry over the whole route, its responsibility as a carrier ends with its own line; and that, for the continuance of the shipment, its liability is only that of a forwarder. The conflict has therefore been one as to the evidence from which a contract for through carriage to a place beyond the line of the receiving carrier might be inferred.

“In this conflicting condition of the decisions as to the circumstances from which an agreement for through transportation of property designated to a point beyond the receiving carrier’s line might be inferred, Congress, by the act here involved, has declared, in substance, that the act receiving property for transportation to a point in another state, and beyond the line of the receiving carrier, shall impose on such receiving carrier the obligation of through transportation, with carrier liability throughout. But this uncertainty of the nature and extent of the liability of a carrier receiving goods destined to a point beyond its own line was not all which might well induce the interposition of the regulating power of Congress. Nothing has perhaps contributed more to the wealth and prosperity of the country than the almost universal practice of transportation companies to co-operate in making through routes and joint rates. Through this method, a situation has been brought about by which, though independently managed, connecting carriers become in effect one system. This practice has its origin in the mutual interests of such companies and in the necessities of an expanding commerce.

“In the leading case of *Muschamp v. Lancaster & P. R. Co.*, cited above, Lord Abinger defended the inference of a contract for through carriage from the mere receipt of a package destined to a point beyond the line of the receiving carrier upon the known practice in his day of such carriers. Upon this subject, in speaking of connecting lines of railway, he said: ‘These railway companies, though separate in themselves, are in the habit, for their own advantage, of making contracts, of which this was one, to convey goods along the whole line, to the ultimate terminus, each of them being agents of the other to carry them forward, and each receiving their share of the profits from the last.’”

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1. *Smeltzer v. St. Louis & S. F. Rd. Co.*, (1908), 158 Fed. Rep. 649, 661, et seq.

2. *Atlantic C. L. Rd. Co. v. Riverside Mills* (1911), 219 U. S. 186, 31 Sup. Ct. Rep. 164, 55 L. Ed. 167, 178, et seq.

#### 2000-K. LIABILITY OF EXPRESS COMPANY AS A FORWARDER.

In *Reid v. Fargo*<sup>1</sup> the United States Supreme Court held that an express company which accepted in London an automobile to be shipped to New York, and, having boxed the same, shipped it by an ocean car-



rier without declaring its value, taking from the steamship company a bill of lading limiting liability to \$100 unless a greater value is declared and extra freight paid, was secondarily liable to the owner, where the car was seriously damaged through the negligence of stevedores employed by the steamship company to discharge the cargo, even though the express company be regarded as a mere forwarding agent. Mr. Chief Justice White, in delivering the opinion of the court, stated: "It is conceded that if the grounds relied upon to fix liability as against the Express Company, the steamship company, and Hogan & Sons are established, there is a right to an independent recovery as to each, whatever may be the recourse of these parties to recover over as against each other. Which of the defendants, if any, was liable primarily for the loss, is, then, to be considered. We first approach this question from the point of view of Hogan & Sons, because undoubtedly that company was in possession and control of the car at the time it dropped into the river and was damaged. While there is some confusion and various slight contradictions in the testimony, we are of the opinion that the trial court was right in holding that the loss occurred through fault of Hogan & Sons, and therefore that the court below erred in reversing the decree against that company. And without undertaking to review the testimony, to all of which we have given a careful consideration, we content ourselves with briefly pointing out the general points of view which have led us to the conclusion stated. Without saying that the mere fact of the dropping of the automobile into the water in the course of delivery from the ship's hold to the pier serves to speak for itself on the issue of responsibility, that is, to bring the case within the principle of *res ipsa loquitur*, we are of the opinion that, by analogy, the case well illustrates that rule for this reason: Some cause must be found for the dropping of the car into the river, and only two theories on this subject may be deduced from the proof; either that the accident to the car occurred without fault, as the result of breaking of the rope composing the sling because of some unseen and hidden defect in such rope, or that it was occasioned by some act of negligence or want of care in handling the car. The first, we are of opinion, is without any substantial support in the proof; in fact, to accept it would conflict with direct and positive proof to the contrary. That view, therefore, could only be sustained by substituting imagination for proof. The second, on the contrary, we are of opinion, finds cogent support from the proof which could only be escaped by overthrowing it by the process of imagination to which we have just referred. It is unquestioned that when the sling was put around the box containing the car, preparatory to attaching the hook in order to hoist it, no blocks or other means were used to prevent the rope from being worn or cut, by the edges of the box. The presumption that the rope was strong and efficient, arising from the fact that it held the weight of the box until it was lifted above the hatch, and until, by the swinging motion, the danger of straining or cutting of the ropes upon the edges was more likely to result, gives adequate ground for the inference that such cutting and straining occurred and led to the severance of the rope, and the precipitation of the car into the water. And this inference is supported by various other circumstances which we do not stop to recapitulate.

"Were the Steamship Company and the Express Company, in the order stated, liable to Reid, the libellant, dependent upon his inability

to make under execution the amount of the decree from Hogan & Sons, is, then, the only remaining question. In substance this question, however, is negligible since, in the argument at bar, it was conceded that T. Hogan & Sons, Incorporated, were amply solvent, and that there was no question of their ability to respond to any decree which might be rendered against them. To avoid, however, all miscarriage of right from any possible, though improbable, change of conditions, without going into detail or stating the considerations which control our conclusion on the subject, we content ourselves with saying, first, that as to the steamship company we are of the opinion that, on the failure to make the amount of the decree against Hogan & Sons, the libellant will be entitled to recover over against that company to the amount of \$100, to which its liability was limited, as stated in the bill of lading under which the shipment was made; second, that even looking upon the Express Company as a forwarder, under the circumstances of the case and the terms of the bill of lading under which the car was shipped by that company, the trial court rightly held it liable, and that recovery against it on failure to enforce the decree against Hogan & Sons will also obtain."<sup>2</sup>

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1. *Reid v. Fargo*, (1916), 241 U. S. 544, 36 Sup. Ct. Rep. 712, 60 L. Ed. 1156.

2. *Ibid.*

#### 2000-L. LIABILITY OF INTERMEDIATE AND TERMINAL CARRIERS AT COMMON LAW.

The law is well settled in this country that each carrier on a through bill of lading is liable only as respects his own line, in the absence of different understanding. Such different understanding may be shown, however, either by express contract, or the existence of circumstances from which it should be inferred.<sup>1</sup>

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1. *Harding v. International Navigation Co.* (1882), 12 Fed. Rep. 168, citing, *Ogdensburg & L. C. Rd. Co. v. Pratt* (1875), 22 Wall. 123, 22 L. Ed. 827.

#### 2000-M. DUTY OF SHIPPER OR CONSIGNEE TO PREVENT INCREASING OF LOSS.

The consignee of perishable goods arriving at destination in bad condition discharged its whole duty to the carrier to save it from resulting loss where it sold the damaged goods for the best price which they would bring.<sup>1</sup>

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1. *Gulf, C. & S. F. Ry. Co. v. Texas Packing Co.* (1917), 244 U. S. 31, 37 Sup. Ct. Rep. 437, 61 L. Ed. 970.

#### 2000-N. DAMAGES FOR MENTAL SUFFERING ONLY ARE NOT RECOVERABLE FROM A CARRIER ON ACCOUNT OF ITS DELAY IN THE DELIVERY OF AN INTERSTATE SHIPMENT.

Damages for mental suffering only are not recoverable from a carrier on account of its delay in the delivery of an interstate shipment.<sup>1</sup>

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1. *Southern Express Co. v. Byers* (1916), 240 U. S. 612, 36 Sup. Ct. Rep. 410, 60 L. Ed. 825.



## 2000-O. BENEFITS OF INSURANCE.

The fact that a cargo insurer has paid a loss due to the fault of the ship does not preclude a recovery from the vessel owner who is primarily liable therefor, and it is immaterial whether the action is brought in the name of the insurer or of the insured for its benefit.<sup>1</sup>

As between a common carrier of goods and an underwriter upon them, the liability to the owner for their loss or destruction is primarily upon the carrier, while the liability of the insurer is only secondary.<sup>2</sup>

An underwriter, who has paid a loss, is entitled to recover what he has paid by a suit in the name of the assured against a carrier who caused the loss.<sup>3</sup>

In *Hall v. Nashville & C. Rd. Co.*<sup>4</sup> the United States Supreme Court, per Mr. Justice Strong, stated: "It is too well settled by the authorities to admit of question that, as between a common carrier of goods and an underwriter upon them, the liability to the owner for their loss or destruction is primarily upon the carrier, while the liability of the insurer is only secondary. The contract of the carrier may not be first in order of time, but it is first and principal in ultimate liability. In respect to the ownership of the goods, and the risk incident thereto, the owner and the insurer are considered but one person, having together the beneficial right to the indemnity due from the carrier for a breach of his contract or for non-performance of his legal duty. Standing thus, as the insurer does practically, in the position of a surety, stipulating that the goods shall not be lost or injured in consequence of the peril insured against, whenever he has indemnified the owner for the loss, he is entitled to all the means of indemnity which the satisfied owner held against the party primarily liable. His right rests upon familiar principles of equity. It is the doctrine of subrogation, dependent not at all upon privity of contract, but worked out through the right of the creditor or owner. Hence, it has often been ruled that an insurer, who has paid a loss, may use the name of the assured in an action to obtain redress from the carrier whose failure of duty caused the loss. It is conceded that this doctrine prevails in cases of marine insurance, but it is denied that it is applicable to cases of fire insurance upon land, and the reason for the supposed difference is said to be that the insurer in a marine policy becomes the owner of the lost or injured property by abandonment of the assured, while in land policies there can be no abandonment. But it is a mistake to assert that the right of insurers in marine policies to proceed against a carrier of the goods, after they have paid a total loss, grows wholly, or even principally, out of any abandonment. There can be no abandonment where there has been total destruction. There is nothing upon which it can operate, and an insured party may recover for a total loss without it. It is laid down in Phillips on Insurance, Sec. 1723, that 'a mere payment of a loss, whether partial or total, gives the insurers an equitable title to what may afterwards be recovered from other parties on account of the loss' and that 'the effect of a payment of a loss is equivalent in this respect to that of abandonment.' There is, then, no reason for the subrogation of insurers by marine policies to the rights of the assured against a carrier by sea which does not exist in support of a like subrogation in case of an insurance against fire on land. Nor do the authorities make any distinction between the cases, though a

carrier may, by stipulation with the owner of the goods, obtain the benefit of the insurance.

"In *Gales v. Hailman*, 11 Pa. St. 515, it was ruled that a shipper who had received from his insurer the part of the loss insured against, might sue the carrier on the contract of bailment in his own right, not only for the unpaid balance due to himself, but as trustee for what had been paid by the insurer in aid of the carrier, and that the court would restrain the carrier from setting up the insurer's payment of his part of the loss as partial satisfaction. So in *Hart v. R. R. Co.*, 13 Met. 99, it was held that where underwriters had paid a loss by fire caused by a locomotive of a railroad corporation, the owner might recover also from the Corporation for the use of the underwriters, and that he could not release the action brought by them in his name. There is, also, a large class of cases in which attempts have been made by insurers who had paid a loss to recover from the party in fault for it, by suit in their own right, and not in the right of the assured. Such attempts have failed, but in all the cases it has been conceded that suits might have been maintained in the name of the insured party for the use of the insurer. *Rockingham Ins. Co. v. Bosher*, 39 Me. 253; *Peoria Ins. Co. v. Frost*, 37 Ill. 333; *Conn. Mut. Life Ins. Co. v. N. Y. & N. H. R. R. Co.*, 25 Conn. 265. And such is the English doctrine settled at an early period, *Mason v. Sainsburg*, 3 Doug. 60 (26 C. S.); *Yates v. Whyte*, 4 Bing., N. C. 272; *Clark v. Blything*, 2 B. & C., 254; *Randal v. Cockran*, 1, Ves. 98."

In *St. Louis, I. M. & S. Ry. Co. v. Commercial Union Insurance Co.*<sup>5</sup> the United States Supreme Court, per Mr. Justice Gray, stated: "In fire insurance, as in marine insurance, the insurer, upon paying to the assured the amount of a loss of the property insured, is doubtless subrogated in a corresponding amount to the assured's right of action against any other person responsible for the loss. But the right of the insurer against such other person does not rest upon any relation of contract or of privity between them. It arises out of the nature of the contract of insurance as a contract of indemnity and is derived from the assured alone, and can be enforced in his right only. By the strict rules of the common law, it must be asserted in the name of the assured; in a court of equity or of admiralty, or under some state codes, it may be asserted by the insurer in his own name; but in any form of remedy the insurer can take nothing by subrogation but the rights of the assured; and if the assured has no right of action, none passes to the insurer. *Hall v. Nashville & C. R. Co.*, 80 U. S. 13 Wall 367, 370, 372 [20: 594, 596, 597]; *Mobile & M. R. Co. v. Jurey*, 111 U. S. 584, 593 [28: 527, 531]; *Phoenix Ins. Co. v. Erie & W. Transp. Co.*, 117 U. S. 312, 321 [29: 873, 878]; *Liverpool & G. W. S. Co. v. Phoenix Ins. Co.*, 129 U. S. 397, 462 [32: 788, 799]; *Connecticut F. Ins. Co. v. Erie R. Co.*, 73 N. Y. 399; *Platt v. Richmond, Y. R. & C. R. Co.*, 108 N. Y. 358, 11 Cent. Rep. 101."

1. *Steamship Wellesley Co. v. Hooper & Co.* (1911), 185 Fed. Rep. 733, 108 C. C. A. 71.
2. *Hall v. Nashville & C. Rd. Co.* (1872), 13 Wall. 367, 20 L. Ed. 594.
3. *Ibid.*
4. *Ibid.* See also, *The Propeller Monticello v. Mollison* (1855), 15 L. Ed. 68, 17 How. 152; *Steamship Wellesley Co. v. Hooper* (1911), 185 Fed. Rep. 733, 108 C. C. A. 71; *Nord-Deutscher Lloyd v. President, etc. of Insurance Co. of North America* (1901), 110 Fed. Rep. 420, 49 C. C. A. 1.
5. *St. Louis, I. M. & S. Ry. Co. v. Commercial Union Insurance Co.* (1891), 139 U. S. 233, 38 L. Ed. 154, 157, 11 Sup. Ct. Rep. 554.



## 2000-P. INVALIDITY OF PROVISIONS OF SHIPPING CONTRACT EXEMPTING CARRIER FROM NEGLIGENCE.

In *New York C. Rd. Co. v. Lockwood*,<sup>1</sup> the United States Supreme Court, per Mr. Justice Bradley, stated: "The plaintiff in this was a drover, injured whilst traveling on a stock train of the defendants, proceeding from Buffalo to Albany, and the suit was brought to recover damages for the injury. He had cattle in the train and had been required at Buffalo to sign an agreement to attend to the loading, transporting and unloading of his cattle and to take all risk of injury to them and of personal injury to himself, or whoever went with the cattle; and received what is called a drover's pass, certifying that he had shipped sufficient stock to pass free to Albany, but declaring that the acceptance of the pass was to be considered a waiver of all claims for damages or injuries received on the train. The agreement stated its consideration to be the carrying of the plaintiff's cattle at less than tariff rates. It was shown on the trial that these rates were about three times the ordinary rates charged, and that no drover had cattle carried on these terms; but all signed similar agreements to that which was signed by the plaintiff and received similar passes. Evidence was given on the trial tending to show that the injury complained of was sustained in consequence of negligence on the part of the defendants or their servants; but they insisted that they were exempted by the terms of the contract from responsibility for all accidents, including those occurring from negligence, at least, the ordinary negligence of their servants, and requested the judge so to charge. This he refused and charged that if the jury were satisfied that the injury occurred without any negligence on the part of the plaintiff, and that the negligence of the defendants caused the injury, they must find for the plaintiff, which they did.

"It is unnecessary to notice the subordinate points made, as we are of opinion that all the questions of fact were fairly left to the jury, and that the whole controversy depended on this main question of law.

"It may be assumed *in limine*, that the case was one of carriage for hire; for though the pass certifies that the plaintiff was entitled to pass free, yet his passage was one of the mutual terms of the arrangement for carrying his cattle. The question is, therefore, distinctly raised, whether a railroad company carrying passengers for hire, can lawfully stipulate not to be answerable for their own or their servants' negligence in reference to such carriage.

"As the duties and responsibilities of public carriers were prescribed by public policy, it has been seriously doubted whether the courts did wisely in allowing that policy to be departed from without legislative interference, by which needed modifications could have been introduced into the law. But the great hardship on the carrier in certain special cases where goods of great value or subject to extra risk were delivered to him without notice of their character, and where losses happened by sheer accident, without any possibility of fraud or collusion on his part, such as by collisions at sea, accidental fire, etc., led to a relaxation of the rule to the extent of authorizing certain exemptions from liability in such cases to be provided for, either by public notice brought home to the owners of the goods, or by inserting exemptions from liability in the bill of lading, or other contract of carriage. A modification of the strict rule of responsibility exempting the car-

rier from liability for accidental losses, where it can be safely done, enables the carrying interest to reduce its rates of compensation; thus proportionally relieving the transportation of produce and merchandise from some of the burden with which it is loaded.

“The question is, whether such modification of responsibility by notice or special contract may not be carried beyond legitimate bounds, and introduce evils against which it was the direct policy of the law to guard; whether, for example, a modification which gives license and immunity to negligence and carelessness on the part of a public carrier or his servants, is not so evidently repugnant to that policy as to be altogether null and void; or, at least, null and void under certain circumstances.

“In the case of sea-going vessels, Congress has, by the act of 1851, relieved ship-owners from all responsibility for loss by fire unless caused by their own design or neglect, and from responsibility for loss of money and other valuables named unless notified of their character and value; and has limited their liability to the value of ship and freight, where losses happen by the embezzlement or other act of the master, crew or passengers, or by collision, or any cause occurring without their privity or knowledge. But the master and crew themselves are held responsible to the parties injured by their negligence or misconduct. Similar enactments have been made by state legislatures. This seems to be the only important modification of previously existing law on the subject, which in this country has been affected by legislative interference. And by this, it is seen, that though intended for the relief of the ship-owner, it still leaves him liable to the extent of his ship and freight for the negligence and misconduct of his employees and liable without limit for his own negligence.

“It is true that the first section of the above act relating to loss by fire has a proviso, that nothing in the act contained shall prevent the parties from making such contract as they please, extending or limiting the liability of ship-owners. This proviso, however, neither enacts nor affirms anything. It simply expresses the intent of Congress to leave the right of contracting as it stood before the act.

“The courts of New York, where this case arose, for a long time resisted the attempts of common carriers to limit their common law liability, except for the purpose of procuring a disclosure of the character and value of articles liable to extra hazard and risk. This they were allowed to enforce by means of a notice of non-liability if the disclosure was not made. But such announcements as ‘all baggage at the risk of owner,’ and such exceptions in bills of lading as ‘this company will not be responsible for injuries by fire, nor for goods lost, stolen or damaged,’ was held to be unavailing and void, as being against the policy of the law. *Cole v. Goodwin*, 19 Wend. 257; *Gould v. Hill*, 2 Hill. 623.

“But since the decision in the case of *Nav. Co. v. Merc. Bank* by this court, in January term, 1848, 6 How. 344, it has been uniformly held, as well in the courts of New York as in the Federal courts, that a common carrier, may, by special contract, limit his common-law liability; although considerable diversity of opinion has existed as to the extent to which such limitation is admissible.

“The case of *Nav. Co. v. Merch. Bank* above adverted to, grew out of the burning of the steamer Lexington. Certain money belonging



to the bank had been intrusted to Harnden's Express, to be carried to Boston, and was on board the steamer when she was destroyed. By agreement between the steamboat company and Harnden, the crate of the latter and its contents were to be at his sole risk. The court held the agreement valid, so far as to exonerate the steamboat company from the responsibility imposed by law; but not to excuse them for misconduct or negligence, which the court said it would not presume that the parties intended to include, although the terms of the contract were broad enough for that purpose, and that inasmuch as the company had undertaken to carry the goods from one place to another, they were deemed to have incurred the same degree of responsibility as that which attaches to a private person engaged casually in the like occupation, and were, therefore, bound to use ordinary care in the custody of the goods, and in their delivery, and to provide proper vehicles and means of conveyance for their transportation; and as the court was of opinion that the steamboat company had been guilty of negligence in these particulars, as well as in the management of the steamers during the fire, they held them responsible for the loss.

"As this has been regarded as a leading case, we may pause for a moment to observe that the case before us seems almost precisely within the category of that decision. In that case, as in this, the contract was general, exempting the carrier from every risk and imposing it all upon the party; but the court would not presume that the parties intended to include the negligence of the carrier or his agents in that exception.

"It is strenuously insisted, however, that as negligence is the only ground of liability in the carriage of passengers, and as the contract is absolute in its terms, it must be construed to embrace negligence as well as accident, the former in reference to passengers, and both in reference to the cattle carried in the train. As this argument seems plausible, and the exclusion of a liability embraced in the terms of exemption on the ground that it could not have been in the mind of the parties is somewhat arbitrary, we will proceed to examine the question before propounded, namely; whether common carriers may excuse themselves from liability for negligence. In doing so we shall first briefly review the course of decisions in New York, on which great stress has been laid, and which are claimed to be decisive of the question. Whilst we cannot concede this, it is, nevertheless, due to the courts of that state to examine carefully the grounds of their decision and to give them the weight which they justly deserve. We think it will be found, however, that the weight of opinion, even in New York, is not altogether on the side that favors the right of the carrier to stipulate for exemption from the consequence of his own or his servant's negligence.

"The first recorded case that arose in New York after the before-mentioned decision in this court, involving the right of a carrier to limit his liability, was that of *Dorr v. Nav. Co.*, decided in 1850. 4 Sandf. 136. This case also arose out of the burning of the *Lexington*, under a bill of lading which excepted from the company's risk 'danger of fire, water, breakage, leakage, and other accidents.' Judge Campbell, delivering the opinion of court, says: 'A common carrier has in truth two distinct liabilities—the one for losses by accident or mistake, where he is liable as an insurer; the other for losses by default or negligence, where he is answerable as an ordinary bailee. It would cer-

tainly seem reasonable that he might by express special contract, restrict his liability as insurer; that he might protect himself against misfortune, even though public policy should require that he should not be permitted to stipulate for immunity where the loss occurs from his own default or neglect of duty. Such we understand to be the doctrine laid down in the case of *Nav. Co. v. Merch. Bk.*, *supra*, and such we consider to be the law in the present case.' And in *Stoddard v. R. Co.*, 5 Sandf. 180, another express case, in which it was stipulated that the express company should be alone responsible for all losses, Judge Duer, for the court, says: "Conforming our decision to that of the Supreme Court of the United States, we must, therefore, hold: 1. That the liability of the defendants as common carriers, was restricted to the terms of the special agreement between them and Adams & Co., and that this restriction was valid in law. 2. That by the just interpretation of this agreement the defendants were not to be exonerated from all losses, but remained liable for such as might result from the wrongful acts, or the want of due care and diligence of themselves or their agents and servants. 3. That the plaintiffs claiming through Adams & Co. are bound by the special agreement.' That same view was taken in subsequent cases, *Parsons v. Monteath*, 13 Barb. 353; *Moore v. Evans*, 14 Barb. 524, all of which show that no idea was then entertained of sanctioning exemptions of liability for negligence.

"It was not till 1858, in the case of *Welles v. R. R. Co.*, 26 Barb. 641, that the Supreme Court was brought to assent to the proposition that a common carrier may stipulate against responsibility for the negligence of his servants. That was the case of a gratuitous passenger traveling on a free ticket, which exempted the company from liability. In 1862 the court of appeals by a majority affirmed this judgment (24 N. Y. 181) and in answer to the suggestion that public policy required that railroad companies should not be exonerated from the duty of carefulness in performing their important and hazardous duties, the court held that the case of free passengers could not seriously affect the incentives to carefulness, because there were very few such, compared with the great mass of the traveling public. *Perkins v. R. Co.*, 24 N. Y. 196, was also the case of a free passenger, with a similar ticket, and the court held that the indorsement exempted the company from all kinds of negligence of its agents, gross as well as ordinary; that there is, in truth, no practical distinction in the degrees of negligence.

"The next cases of importance that arose in the New York courts, were those drover's passes, in which the passenger took all responsibility of injury to himself and stock. The first was that of *Smith v. R. Co.*, 29 Barb. 132, decided in March, 1859. The contract was precisely the same as that in the present case. The damage arose from a flattened wheel in the car, which caused it to jump the track. The Supreme Court, by Hogeboom, J., held that the railroad company was liable for any injury happening to the passenger, not only by the gross negligence of the company's servants, but by ordinary negligence on their part. 'For my part,' says the Judge, 'I think not only gross negligence is not protected by the terms of the contract, but what is termed ordinary negligence, or the withholding of ordinary care, is not so protected. I think, notwithstanding the contract, the carrier is responsible for what, independent of any peculiar responsibility at-



tached to his calling or employment, would be regarded as fault or misconduct on his part.' The Judge added that he thought the carrier might, by positive stipulation, relieve himself to a limited degree from the consequences of his own negligence or that of his servants. But, to accomplish that object, the contract must be clear and specific in its terms, and plainly covering such a case. Of course, this remark was extrajudicial. The judgment itself was affirmed by the court of appeals in 1862 by a vote of five judges to three, 24 N. Y. 222. Judge Wright strenuously contended that it is against public policy for a carrier of passengers, where human life is at stake, to stipulate for immunity for any want of care. 'Contracts in restraint of trade are void' he says, 'because they interfere with the welfare and convenience of the state; yet the state has a deep interest in protecting the lives of its citizens.' He argued that it was a question affecting the public, and not alone the party who is carried. Judge Sutherland agreed in substance with Judge Wright. Two other judges held that if the party injured had been a gratuitous passenger the company would have been discharged, but in their view he was not a gratuitous passenger. One Judge was for affirmance, on the ground that the negligence was that of the company itself. The remaining three judges held the contract valid to the utmost extent of exonerating the company, notwithstanding the grossest neglect on the part of its servants.

"In that case, as in the one before us, the contract was general in its terms, and did not specify negligence of agents as a risk assumed by the passenger, though by its generality it included all risks.

"The next case, *Bissell v. R. R. Co.*, 29 Barb. 602, first decided in September, 1859, differed from the preceding in that the ticket expressly stipulated that the railroad company should not be liable under any circumstances 'whether of negligence by their agents or otherwise,' for injury to the person or stock of the passenger. The latter was killed by the express train running into the stock train, and the jury found that his death was caused by the gross negligence of the agents and servants of the defendants. The Supreme Court held that gross negligence (whether of servants or principals) cannot be excused by contract in reference to the carriage of passengers for hire, and that such a contract is against the policy of the law, and void. In December, 1862, this judgment was reversed by the court of appeals (25 N. Y. 442), four judges against three: Judge Smith, who concurred in the judgment below, having in the meantime changed his views as to the materiality of the fact that the negligence stipulated against was that of the servants of the company, and not of the company itself. The majority now held that the ticket was a free ticket, as it purported to be, and, therefore, that the case was governed by *Welles v. R. Co.*; but whether so or not, the contract was founded on a valid consideration, and the passenger was bound by it even to the assumption of the risk arising from the gross negligence of the company's servants. Elaborate opinions were read by Justice Selden in favor, and by Justice Denio against, the conclusion reached by the court. The former considered that no rule of public policy forbids such contracts, because the public is amply protected by the right of everyone to decline any special contract on paying the regular fare prescribed by law, that is, the highest amount which the law allows the company to charge. In other words, unless a man chooses to pay the highest amount which the company by its charter is authorized to charge, he must submit to

their terms, however onerous. Justice Denio, with much force of argument, combated this view, and insisted upon the impolicy and immorality of contracts stipulating immunity for negligence, either of servants or principals, where the lives and safety of passengers are concerned. The late case of *Poucher v. R. R. Co.*, 49 N. Y. 263, is in all essential respects a similar case to this, and a similar result was reached.

"These are the authorities which we are asked to follow. Cases may also be found in some of the other state courts, which, by *dicta* or decision, either favor or follow, more or less closely, the decisions in New York. A reference to the principal of them is all that is necessary here. *Ashmore v. Pa. S. T. & T. Co.*, 4 Dutch, 180; *Kinney v. Cent. R. R. Co.*, 3 Vroom, 407; *Hale v. N. J. St. Nav. Co.*, 15 Conn. 539; *Peck v. Weeks*, 34 Conn. 145; *Lawrence v. N. Y. R. R. Co.*, 36 Conn. 63; *Kimball v. Rutland R. Co.*, 26 Vt. 247; *Mann v. Birchard*, 40 Vt. 326; *Adams Exp. Co. v. Haynes*, 42 Ill. 89 *Ib.* 458; *Ill. Cent. R. Co. v. Adams*, 42 Ill. 474; *Hawkins v. Gt. West. R. R. Co.*, 17 Mich. 57; 18 *Id.* 427; *Balti. & O. R. Co. v. Brady*, 32 Md. 333, 25 Md. 128; *Levering v. Union Trans. Co.*, 42 Mo. 88.

"A review of the cases decided by the courts of New York shows that though they have carried the power of the common carrier to make special contracts to the extent of enabling him to exonerate himself from the effects of even gross negligence, yet that this effect has never been given to a contract general in its terms. So that if we only felt bound by these precedents, we could perhaps, find no authority for reversing the judgment in this case. But on a question of general commercial law, the Federal Courts administering justice in New York have equal and co-ordinate jurisdiction with the courts of that state. And in deciding a case which involves a question of such importance to the whole country; a question on which the courts of New York have expressed such diverse views, and have so recently and with such slight preponderancy of judicial suffrage, come to the conclusion that they have; we should not feel satisfied without being able to place our decision upon grounds satisfactory to ourselves, and resting upon what we consider sound principles of law.

"In passing, however, it is apposite to call attention to the testimony of an authoritative witness as to the operation and effect of the recent decisions referred to. 'The fruits of this rule,' says Judge Davis, 'are already being gathered in increasing accidents, through the decreasing care and vigilance on the part of these corporations; and they will continue to be reaped until a just sense of public policy shall lead to legislative restriction upon the power to make this kind of contract.' *Stinson v. N. Y. C. R. R. Co.*, 32 N. Y. 337.

"We now proceed to notice some cases decided in other states, in which a different view of the subject is taken.

"In Pennsylvania, it is settled by a long course of decisions, that a common carrier cannot, by notice or special contract, limit his liability so as to exonerate him from responsibility for his own negligence or misfeasance, or that of his servants and agents. *Laing v. Colder*, 8 Pa. 479; *Cam. & A. R. Co. v. Baldauf*, 16 Pa. 67; *Goldey v. Pa. R. R. Co.*, 30 Pa. 242; *Powell v. Same*, 32 Pa. 414; *Pa. R. R. Co. v. Henderson*, 51 Pa. 315; *Farnham v. Cam. & A. R. R. Co.*, 55 Pa. 53; *Exp. Co. v. Sands*, 55 Pa. 140; *Empire Trans. Co. v. Wamsutta Oil Co.*, 63 Pa. 14. 'The



doctrine is firmly settled,' says Chief Justice Thompson in *Farnham v. Cam. & A. R. Co.*, 55 Pa. 62, 'that a common carrier cannot limit his liability so as to cover his own or his servants' negligence.' This inability is affirmed, both when the exemption is stipulated for is general, covering all risks, and where it specifically includes damages arising from the negligence of the carrier or his servants. In *R. Co. v. Henderson*, 51 Pa. 315, a drover's pass stipulated for immunity of the company in case of injury from negligence of its agents, or otherwise. The court, Judge Read delivering the opinion, after a careful review of the Pennsylvania decisions, says: 'This indorsement relieves the company from all liability for any cause whatever, for any loss or injury to the person or property, however it may have been occasioned; and our doctrine, settled by the above decisions, made upon grave deliberation, declares that such a release is no excuse for negligence.'

"The Ohio cases are very decided on this subject, and reject all attempts of the carrier to excuse his own negligence, or that of his servants. *Jones v. Voorhees*, 10 Ohio 145; *Davidson v. Graham*, 2 Ohio St. 131; *Graham v. Davis*, 4 Ohio St. 362; *Wilson v. Hamilton*, 4 Ohio St. 722; *Welsh v. Pittsb. Ft. W. & C. R. Co.*, 10 Ohio St. 75; *Cleveland R. Co. v. Curran*, 19 Ohio St. 1; *Cincinnati, etc. R. Co. v. Pontius*, 19 Ohio St. 221; *Knowlton v. Erie R. Co.*, 19 Ohio St. 260. In *Davidson v. Graham*, 2 Ohio St. 131, the court, after conceding the right of the carrier to make special contracts to a certain extent says: 'He cannot, however, protect himself from losses occasioned by his own fault. He exercises a public employment, and diligence and good faith in the discharge of his duties are essential to the public interests. \* \* \* And public policy forbids that he should be relieved by special agreement from that degree of diligence and fidelity which the law has exacted in the discharge of his duties.' In *Welsh v. R. Co.*, 10 Ohio St. 76, the court says: 'In this state, at least, railroad companies are rapidly becoming almost the exclusive carriers both of passengers and goods. In consequence of the public character and agency which they have voluntarily assumed, the most important powers and privileges have been granted to them by the state.' From these facts, the court reasons that it is specially important that railroad companies should be held to the exercise of due diligence at least. And as to the distinction taken by some, that negligence of servants may be stipulated for, the court pertinently says: 'This doctrine, when applied to a corporation which can only act through its agents and servants, would secure complete immunity for the neglect of every duty.' And in relation to a drover's pass substantially the same as that in the present case, the same court, in *R. Co. v. Curran*, 19 Ohio St. 1-13, held: First, that the holder was not a gratuitous passenger; Second, that the contract constituted no defense against the negligence of the company's servants, being against the policy of the law, and void. The court refers to the cases of *Bissell v. R. Co.*, 25 N. Y. 442, and of *R. Co. v. Henderson*, 51 Pa. 315, and expresses its concurrence in the Pennsylvania decision. This was in December term, 1869.

"The Pennsylvania and Ohio decisions differ mainly in this, that the former give to a special contract (when the same is admissible) the effect of converting the common carrier into a special bailee for hire, whose duties are governed by his contract, and against whom, if neg-

ligence is charged, it must be proved by the party injured; whilst the latter hold that the character of the carrier is not changed by the contract, but that he is a common carrier still, with enlarged exemptions from responsibility, within which the burden of proof is on him to show that an injury occurs. The effect of this difference is to shift the burden of proof from one party to the other. It is unnecessary to adjudicate that point in this case, as the judge on the trial charged the jury, as requested by the defendants, that the burden of proof was on the plaintiff.

"In Maine, whilst it is held that a common carrier may, by special contract, be exempted from responsibility for loss occasioned by natural causes, such as the weather, fire, heat, frost, etc. (*Fillebrown v. Grand Trunk R. R. Co.*, 55 Me. 462), yet in a case where it was stipulated that a railroad company should be exonerated from all damages that might happen to any horses or cattle that might be sent over the road, and that the owners should take the risk of all such damages, the court held that the company were not thereby excused from the consequences of their negligence, and that the distinction between negligence and gross negligence in such a case is not tenable. 'The very great danger,' says the court, 'to be anticipated by permitting them' (common carriers) 'to enter into contracts to be exempt from losses occasioned by misconduct or negligence, can scarcely be overestimated. It would remove the principal safeguard for the preservation of life and property in such conveyances.' *Sager v. Portsmouth*, 31 Me. 228, 238.

"To the same purport it was held in Massachusetts in the late case of *School District v. Boston, etc., Railroad Co.*, 102 Mass. 552, 556, where the defendant set up a special contract that certain iron castings were taken at the owner's risk of fracture or injury during the course of transportation, loading and unloading, and the court say: 'The special contract here set up is not alleged, and could not by law be permitted, to exempt the defendants from liability for injuries by their own negligence.'

"To the same purport, likewise, are many other decisions of the state courts, as may be seen by referring to the cases cited in the margin, some of which are argued with great force and are worthy of attentive perusal, but, for want of room, can only be referred to here. *R. Co. v. Allen*, 31 Ind. 394; *M. S. R. R. v. Heaton*, 31 Ind. 397; *Flinn v. Phila. Wil. & Balti. R. Co.*, 1 Houst. 472; *Orndorff v. Adams Exp. Co.*, 3 Bush, 194; *Swindler v. Hilliard*, 2 Rich. (S. C.) 286; *Berry v. Cooper*, 28 Ga. 543; *Steele v. Townsend*, 37 Ala. 247; *Southern Exp. Co. v. Crook*, 44 Ala. 468; *Whiteside v. Thurikill*, 12 Sm. & M., 599; *Southern Exp. Co. v. Moon*, 39 Miss. 822; *N. O. Mut. Ins. Co. v. R. Co.*, 20 La. Ann. 302.

"These views as to the impolicy of allowing stipulations against liability for negligence and misconduct are in accordance with the early English authorities. St. Germain, in *The Doctor and Student* (Dial, 2 c. 38), pointedly says of the common carrier: 'If he would per case refuse to carry it (articles delivered for carriage) unless promise were made unto him that he shall not be charged for no misdemeanor that should be in him, the promise were void, for it were against reason and against good manners, and so it is in all other cases like.'



"A century later this passage is quoted by Attorney General Noy in his book of *Maxims* as unquestioned law. Noy, *Max.* 92. And so the law undoubtedly stood in England until comparatively a very recent period. Serjeant Steven, in his *Commentaries* (Vol. 2, p. 135), after stating that a common carrier's liability might, at common law, be varied by contract, adds that the law still held him responsible for negligence and misconduct.

"The question arose in England principally upon public notices given by common carriers that they would not be responsible for valuable goods unless entered and paid for according to value. The courts held that this was a reasonable condition and, if brought home to the owner, amounted to a special contract valid in law. But it was also held that it could not exonerate the carrier if a loss occurred by his actual misfeasance or gross negligence. Or, as Starkie says, 'proof of a direct misfeasance or gross negligence is, in effect, an answer to proof of notice.' *Ev.* vol. 2, p. 205, 6th Am. ed. But the term 'gross negligence' was so vague and uncertain that it came to represent every instance of actual negligence of the carrier or his servant—or ordinary negligence in the accustomed mode of speaking. *Hinton v. Dibbin*, 2 Ad. & El. N. S. 649; *Wyld v. Pickford*, 8 Mees. & W. 460. Justice Story, in his work on bailments (Sec. 571) originally published in 1832, says that it is now held that, in cases of such notices, the carrier is liable for losses and injury occasioned not only by gross negligence, but by ordinary negligence; or, in other words, the carrier is bound to ordinary diligence.

"In estimating the effect of these decisions, it must be remembered that, in the cases covered by the notices referred to, the exemption claimed was entire, covering all cases of loss, negligence as well as others. They are, therefore, directly in point.

"In 1863, in the great case of *Peek v. North Staffordshire R. Co.*, 10 H. L. Cas. 473, Mr. Justice Blackburn, in the course of a very clear and able review of the law on the subject, after quoting this passage from Justice Story's work, proceeds to say: 'In my opinion, the weight of authority was, in 1832, in favor of this view of the law, but the cases decided in our courts between 1832 and 1854 established that this was not the law, and that a carrier might, by a special notice, make a contract limiting his responsibility even in the cases here mentioned, of gross negligence, misconduct, or fraud, on the part of his servants, and, as it seems to me, the reason why the legislature intervened in the Railway and Canal Traffic Act, 1854, was because it thought that the companies took advantage of those decisions (in Story's language) 'to evade altogether the salutary policy of the common law.'

"This quotation is sufficient to show the state of the law in England at the time of the publication of Justice Story's work; and it proves that, at that time, common carriers could not stipulate for immunity for their own or their servants' negligence. But in the case of *Carr v. Lancashire R. Co.* 7 Exch. 707, and other cases decided whilst the change of opinion, alluded to by Justice Blackburn, was going on (several of which related to the carriage of horses and cattle) it was held that carriers could stipulate for exemption from liability for even their own gross negligence. Hence the act of 1854 was passed, called the Railway and Canal Traffic Act, declaring that railway and canal

companies should be liable for negligence of themselves or their servants, notwithstanding any notice or condition, unless the court or judge trying the cause should adjudge the conditions just and reasonable. 1 Fisher, Dig. 1466. Upon this statute ensued a long list of cases deciding what conditions were or were not just and reasonable. The truth is, that this statute did little more than bring back the law to the original position in which it stood before the English courts took their departure from it. But as we shall have occasion to advert to this subject again, we pass it for the present.

“It remains to see what has been held by this court on the subject now under consideration.

“We have already referred to the leading cases of *Nav. Co. v. Merch. Bk.*, 6 How. 383. On the precise point now under consideration, Justice Nelson said: ‘If it is competent at all for the carrier to stipulate for the gross negligence of himself and his servants or agents, in the transportation of goods, it should be required to be done, at least, in terms that would leave no doubt as to the meaning of the parties.’

“As to carriers of passengers, Mr. Justice Grier, in the case of *R. Co. v. Derby*, 14 How. 486, delivering the opinion of the court, said: ‘When the carriers undertake to convey persons by the powerful but dangerous agency of steam, public policy and safety require that they be held to the greatest possible care and diligence. And whether the consideration for such transportation be pecuniary or otherwise, the personal safety of the passengers should not be left to the sport of chance, or the negligence of careless agents. Any negligence, in such cases, may well deserve the epithet of “gross.”’ That was the case of a free passenger, a stockholder of the company, taken over the road by the president to examine its conditions; and it was contended in argument that, as to him, nothing but ‘gross negligence’ would make the company liable. In the subsequent case of *The New World v. King*, 16 How. 469, 474, which was also the case of a free passenger carried on a steamboat, and injured by the explosion of the boiler, Curtis, Justice, delivering the judgment, quoted the above proposition of Justice Grier, and said: ‘We desire to be understood to reaffirm that doctrine, as resting not only on public policy, but on sound principles of law.’

“In *York Co. v. R. Co.* 3 Wall. 113, 18 L. ed. 172, the court after conceding that the responsibility imposed on the carrier of goods by the common law may be restricted and qualified by express stipulations, adds: ‘When such stipulation is made, and it does not cover losses from negligence or misconduct, we can perceive no just reason for refusing its recognition and enforcement.’ In the case of *Walker v. Transportation Co.* decided at the same term, 3 Wall. 150, 18 L. ed. 172, it is true, the owner of a vessel destroyed by fire on the lakes, was held not to be responsible for the negligence of the officers and agents having charge of the vessel; but that was under the act of 1851, which the court held to apply to our great lakes as well as to the sea. And in *Express Co. v. Kountze*, 8 Wall 342, 353, 19 L. ed. 457, 460, where the carriers were sued for the loss of gold dust delivered to them on a bill of lading excluding liability for any loss or damages by fire, act of God, enemies of the government, or dangers incidental to a time of war, they were held liable for a robbery by a predatory band of armed men (one of the excepted risks), because they negligently and needlessly took a route which was exposed to such incursions. The judge, at the trial,



charged the jury that although the contract was legally sufficient to restrict the liability of the defendants as common carriers, yet if they were guilty of actual negligence, they were responsible; and that they were chargeable with negligence unless they exercised the care and prudence of a prudent man in his own affairs. This was held by this court to be a correct statement of the law.

"Some of the above citations are only expressions of opinions, it is true; but they are the expressions of judges whose opinions are entitled to much weight; and the last cited case is a judgment upon the precise point. Taken in connection with the concurring decisions of state courts before cited, they seem to us decisive of the question, and leave but little to be added to the considerations which they suggest.

"It is argued that a common carrier, by entering into a special contract with a party for carrying his goods or person on modified terms, drops his character and becomes an ordinary bailee for hire and, therefore, may make any contract he pleases. That is, he may make any contract whatever, because he is an ordinary bailee; and he is an ordinary bailee because he has made the contract.

"We are unable to see the soundness of this reasoning. It seems to us more accurate to say that common carriers are such by virtue of their occupation, not by virtue of the responsibilities under which they rest. Those responsibilities may vary in different countries, and at different times, without changing the character of the employment. The common law subjects the common carrier to insurance of the goods carried, except as against the act of God or public enemies. The civil law excepts, also, losses by means of any superior force, and any inevitable accident. Yet the employment is the same in both cases. And if by special agreement the carrier exempted from still other responsibilities, it does not follow that his employment is changed, but only that his responsibilities are changed. The theory occasionally announced, that a special contract as to the terms and responsibilities of carriage changes the nature of the employment, is calculated to mislead. The responsibilities of a common carrier may be reduced to those of an ordinary bailee for hire, whilst the nature of his business renders him a common carrier still. Is there any good sense in holding that a railroad company, whose only business is to carry passengers and goods, and which was created and established for that purpose alone, is changed to a private carrier for hire by a mere contract with a customer, whereby the latter assumes the risk of inevitable accidents in the carriage of his goods? Suppose the contract relates to a single crate of glass or crockery, whilst at the same time the carrier receives from the same person twenty other parcels, respecting which no such contract is made. Is the company a public carrier as to the twenty parcels and a private carrier as to the one?

"On this point there are several authorities which support our view, some of which are noted in the margin. *Davidson v. Graham*, 2 Ohio St. 131; *Graham v. Davis*, 4 Ohio St. 362; *Swindler v. Hilliard*, 2 Rich. 286; *Baker v. Brinson*, 9 Rich. 201; *Steele v. Townsend*, 37 Ala. 247.

"A common carrier may, undoubtedly, become a private carrier, or a bailee for hire, when, as a matter of accommodation or special engagements he undertakes to carry something which it is not his business to carry. For example, if a carrier of produce, running a

truck boat between New York city and Norfolk, should be requested to carry a keg of specie, or a load of expensive furniture, which he could justly refuse to take, such agreement might be made in reference to his taking and carrying the same as the parties chose to make, not involving any stipulation contrary to law or public policy. But when a carrier has a regularly established business for carrying all or certain articles, and especially if that carrier be a corporation created for the purpose of the carrying trade, and the carriage of the articles is embraced within the scope of its chartered powers, it is a common carrier, and a special contract about its responsibility does not devalue it of the character.

“But it is contended that though a carrier may not stipulate for his own negligence, there is no good reason why he should not be permitted to stipulate for immunity for the negligence of his servants, over whose actions, in his absence, he can exercise no control. If we advert for a moment to the fundamental principles on which the law of common carriers is founded, it will be seen that this objection is inadmissible. In regulating the public establishment of common carriers, the great object of the law was to secure the utmost care and diligence in the performance of their important duties—an object essential to the welfare of every civilized community. Hence the common-law rule which charged the common carrier as an insurer. Why charge him as such? Plainly for the purpose of raising the most stringent motive for the exercise of carefulness and fidelity in his trust. In regard to passengers the highest degree of carefulness and diligence is expressly exacted. In the one case the securing of the most exact diligence and fidelity underlies the law, and is the reason for it; in the other it is directly and absolutely prescribed by the law. It is obvious, therefore, that if a carrier stipulate not to be bound to the exercise of care and diligence, but to be at liberty to indulge in the contrary, he seeks to put off the essential duties of his employment. And to assert that he may do so seems almost a contradiction in terms.

“Now, to what avail does the law attach these essential duties to the employment of the common carrier, if they may be waived in respect to his agents and servants, especially where the carrier is an artificial being, incapable of acting except by agents and servants? It is carefulness and diligence in performing the service which the law demands, not an abstract carefulness and diligence in proprietors and stockholders who take no active part in the business. To admit such a distinction in the law of common carriers, as the business is now carried on, would be subversive of the very object of the law.

“It is a favorite argument in the cases which favor the extension of the carrier’s right to contract for exemption from liability, that men may be permitted to make their own agreements, and that it is no concern of the public on what terms an individual chooses to have his goods carried. Thus, in *Dorr v. Nav. Co.* 11 N. Y. 485, the court sums up its judgment thus: ‘To say the parties have not a right to make their own contracts, and limit the precise extent of their own respective risks and liabilities, in a matter no way affecting the public morals, or conflicting with the public interests, would, in my judgment, be an unwarrantable restriction upon trade and commerce, and a most palpable invasion of personal right.’



"Is it true that the public interest is not affected by individual contracts of the kind referred to? Is not the whole business community affected by holding such contracts valid? If held valid, the advantageous position of the companies exercising the business of common carriers is such that it places it in their power to change the law of common carriers in effect by introducing new rules of obligation.

"The carrier and his customer do not stand on a footing of equality. The latter is only one individual of a million. He cannot afford to higggle or stand out and seek redress in the courts. His business will not admit such a course. He prefers, rather, to accept any bill of lading, or sign any paper the carrier presents; often, indeed, without knowing what the one or the other contains. In most cases, he has no alternative, but to do this, or abandon his business. In the present case, for example, the freight agents of the company testified that though they made forty or fifty contracts every week like that under consideration, and had carried on the business for years, no other arrangement than this was ever made with any drover. And the reason is obvious enough—if they did not accept this, they must pay tariff rates. These rates were 70 cents a hundred pounds for carrying from Buffalo to Albany and each horned animal was rated at 2,000 pounds, making a charge of \$14 for every animal carried, instead of the usual charge of \$70 for a car load; being a difference of three to one. Of course, no drover could afford to pay such tariff rates. This fact, is adverted to for the purpose of illustrating how completely in the power of the railroad companies parties are, and how necessary it is to stand firmly by those principles of law by which the public interests are protected.

"If the customer had any real freedom of choice, if he had a reasonable and practicable alternative, and if the employment of the carrier were not a public one, charging him with the duty of accommodating the public in the line of his employment; then, if the customer chose to assume the risk of negligence, it could with more reason be said to be his private affair, and no concern of the public. But the condition of things is entirely different, and especially so under the modified arrangements which the carrying trade has assumed. The business is mostly concentrated in a few powerful corporations, whose position in the body politic enables them to control it. They do, in fact, control it, and impose such conditions upon travel and transportation as they see fit, which the public is compelled to accept. These circumstances furnish an additional argument, if any were needed, to show that the conditions imposed by common carriers ought not to be adverse (to say the least) to the dictates of public policy and morality. The status and relative position of the parties render any such conditions void. Contracts of common carriers, like those of persons occupying a fiduciary character, giving them a position in which they can take undue advantage of the persons with whom they contract, must rest upon their fairness and reasonableness. It was for the reason that the limitations of liability first introduced by common carriers into their notices and bills of lading were just and reasonable, that the courts sustained them. It was just and reasonable that they should not be responsible for losses happening by sheer accidents, or dangers of navigation that no human skill or

vigilance could guard against; it was just and reasonable that they should not be chargeable for money or other valuable articles liable to be stolen or damaged, unless apprised of their character or value; it was just and reasonable that they should not be responsible for articles liable to rapid decay; or for live animals liable to get unruly from fright and to injure themselves in that state, when such articles or live animals became injured without their fault or negligence. And when any of these just and reasonable excuses were incorporated into notices or special contracts assented to by their customers, the law might well give effect to them without the violation of any important principles, although modifying the strict rules of responsibility imposed by the common law. The improved state of society and the better administration of the laws, had diminished the opportunities of collusion and bad faith on the part of the carrier, and rendered less imperative the application of the iron rule, that he must be responsible at all events. Hence, the exemptions referred to were deemed reasonable and proper to be allowed. But the proposition to allow a public carrier to abandon altogether his obligations to the public, and to stipulate for exemptions that are unreasonable and improper, amounting to an abdication of the essential duties of his employment, would never have been entertained by the sages of the law.

“Hence, as before remarked, we regard the English statute called the Railway and Canal Traffic Act, passed in 1854, which declared void all notices and conditions made by common carriers except such as the judge, at the trial, or the courts, should hold just and reasonable, as substantially a return to the rules of the common law. It would have been more strictly so, perhaps had the reasonableness of the contract been referred to the law instead of the individual judges. The decisions made for more than half a century before the courts commenced the abnormal course which led to the necessity of that statute, giving effect to certain classes of exemptions stipulated for by the carrier, may be regarded as authorities on the question as to what exemptions are just and reasonable. So the decisions of our own courts are entitled to like effect when not made under the fallacious notion that every special contract imposed by the common carrier on his customers must be carried into effect, for the simple reason that it was entered into, without regard to the character of the contract and the relative situation of the parties.

“Conceding, therefore, that special contracts, made by common carriers with their customers, limiting their liability, are good and valid so far as they are just and reasonable; to the extent, for example, of excusing them for all losses happening by accident, without any negligence or fraud on their part; when they ask to go still further and to be excused for negligence, an excuse so repugnant to the law of their foundation and to the public good, they have no longer any plea of justice or reason to support such a stipulation, but the contrary. And then, the inequality of the parties, the compulsion under which the customer is placed, and the obligations of the carrier to the public, operate with full force to devalue the transaction of validity.

“On this subject, the remarks of Chief Justice Redfield, in his recent collection of American Railway Cases, seem to us eminently just. ‘It being clearly established then,’ says he, ‘that common car-



riers have public duties which they are bound to discharge with impartiality, we must conclude that they cannot, either by notices or special contracts, release themselves from the performance of these public duties, even by the consent of those who employ them; for all extortion is done by the apparent consent of the victim. A public officer or servant who has a monopoly in his department, has no just right to impose onerous and unreasonable conditions upon those who are compelled to employ him.' And his conclusion is, that notwithstanding some exceptional decisions, the law of to-day, stands substantially as follows: '1. That the exemption claimed by carriers must be reasonable and just, otherwise it will be regarded as extorted from the owners of the goods by duress of circumstances and, therefore, not binding. 2. That every attempt of carriers, by general notices or special contract, to excuse themselves from responsibility for losses or damages resulting in any degree from their own want of care and faithfulness, is against that good faith which the law requires as the basis of all contracts or employments and, therefore, based upon principles and a policy which the law will not uphold.'

"The defendants endeavor to make a distinction between gross and ordinary negligence, and insist that the judge ought to have charged that the contract was at least effective for excusing the latter.

"We have already adverted to the tendency of judicial opinion adverse to the distinction between gross and ordinary negligence. Strictly speaking, these expressions are indicative rather of the degree of care and diligence which is due from a party and which he fails to perform, than of the amount of inattention, carelessness or stupidity which he exhibits. If very little care is due from him, and he fails to bestow that little it is called gross negligence. If very great care is due and he fails to come up to the mark required, it is called slight negligence. And if ordinary care is due, such as a prudent man would exercise in his own affairs, failure to bestow that amount of care is called ordinary negligence. In each case, the negligence, whatever epithet we give it, is failure to bestow the care and skill which the situation demands, and hence it is more strictly accurate, perhaps, to call it simply 'negligence.' And this seems to be the tendency of modern authorities. 1. *Sm. L. Cas.* 453, 7th Am. ed. *Story, Bail.*, Sec. 571; *Wyld v. Pickford*, 8 Mees. & W. 460; *Hinton v. Dibbin*, 2 Q. B. 661; *Wilson v. Britt*, 11 Mees. & W. 115; *Beal v. So. Dev. R. Co.*, 3 Hurlst & Colt, 337; *Grill v. Iron Screw Coll. Co.* *Law Rep.* 1 C. P. 600; *Philadelphia & R. Ry Co. v. Derby*, 14 How. 486; *The New World v. King*, 16 How. 474. If they mean more than this, and seek to abolish the distinction of degrees of care, skill, and diligence required in the performance of various duties and the fulfillment of various contracts, we think they go too far; since the requirements of different degrees of care in different situations, is too firmly settled and fixed in the law to be ignored or changed. The compilers of the French Civil Code undertook to abolish these distinctions, by enacting that 'Every act whatever, of man, that causes damage to another, obliges him by whose fault it happened to repair it.' Art. 1382. Toul-lier, in his commentary on the Code, regards this as a happy thought, and a return to the law of nature. Vol. 6 p. 243. But such an iron rule is too regardless of the foundation principles of human duty, and must often operate with great severity and injustice.

"In the case before us, the law, in the absence of special contract, fixes the degree of care and diligence due from the railroad company to the persons carried on its trains. A failure to exercise such care and diligence is negligence. It needs no epithet properly and legally to describe it. If it is against the policy of the law to allow stipulations which will relieve the company from the exercise of that care and diligence, or which, in other words, will excuse them for negligence in the performance of that duty, then the company remains liable for such negligence. The question whether the company was guilty of negligence in this case, which caused the injury sustained by the plaintiff, was fairly left to the jury. It was unnecessary to tell them whether, in the language of law writers, such negligence would be called gross or ordinary.

"The conclusions to which we have come are:

"First. That a common carrier cannot lawfully stipulate for exemption from responsibility when such exemption is not just and reasonable in the eye of the law.

"Secondly. That it is not just and reasonable in the eye of the law for a common carrier to stipulate for exemption from responsibility for the negligence of himself or his servants.

"Thirdly. That these rules apply both to carriers of goods and carriers of passengers for hire, and with a special force to the latter.

"Fourthly. That a drover traveling on a pass, such as was given in this case, for the purpose of taking care of his stock on the train, is a passenger for hire.

"These conclusions decide the present case, and require a judgment of affirmance. We purposely abstain from expressing any opinion as to what would have been the result of our judgment had we considered the plaintiff a free passenger instead of a passenger for hire. *Judgment affirmed.*"

In *Planters National Bank of Louisiana v. Adams Express Co.*<sup>2</sup> the United States Supreme Court, per Mr. Justice Strong, stated: "The duty of a common carrier is to transport and deliver safely. He is made, by the law, an insurer against all failure to perform this duty, except such failure as may be caused by the public enemy, or by what is denominated the act of God. By special contract with his employers, he may, it is true, to some extent, be excused, if the limitations to his responsibility stipulated for are, in the judgment of the law, reasonable, and not inconsistent with sound public policy. It is agreed, however, he cannot by any contract with his customers, relieve himself from responsibility for his own negligence or that of his servants; and this because such a contract is unreasonable and contrary to legal policy. So much has been finally determined in *R. Co. v. Lockwood*, 17 Wall. 357, 21 L. ed. 627. But can he, by a contract made with those who intrust property to him for carriage and delivery, a contract made at the time he receives the property, secure to himself exemption from responsibility for consequences of the negligence of a railroad company or its agents not owned or controlled by him, but which he employs in the transportation? This question is not answered in the *Lockwood Case*. It is raised here, or rather the question is presented, whether a common carrier does relieve himself from the consequence of such negligence by a stipulation that he shall not be liable for losses by fire.



“The exception or restriction to the common law liability introduced into the bills of lading given by the defendants, so far as it is necessary to consider it, is, ‘That the express company are not to be liable in any manner or to any extent for any loss or damage, or detention of such package or its content, or of any portion thereof, occasioned by fire.’ The language is very broad; but it must be construed reasonably and if possible, consistently with the law. It is not to be presumed the parties intended to make a contract which the law does not allow. If construed literally, the exception extends to all loss by fire, no matter how occasioned, whether occurring accidentally or caused by the culpable negligence of the carriers or their servants, and even to all losses by fire caused by willful acts of the carriers themselves. That it can be operative to such an extent is not claimed. Nor is it insisted that the stipulation though assented to by the shippers, can protect the defendants against responsibility for failure to deliver the packages according to their engagement, when such failure has been caused by their own misconduct, or that of their servants or agents. But the circuit court ruled, the exception did extend to negligence beyond the carriers’ own and that of his servants and agents appointed by them and under their control; that it extended to losses by fire resulting from the carelessness of a railroad company, employed by them in the service which they undertook, to carry the packages; and the reason assigned for the ruling was, that the Railroad Company and its employees were not under the control of the defendants. With this ruling we are unable to concur. The Railroad Company, in transporting the messenger of the defendants and the express matter in his charge, was the agent of somebody; either of the Express Company or of the shippers or consignee of the property. That it was the agent of the defendants is quite clear. It was employed by them, and paid by them. The service it was called upon to perform was a service for the defendants; a duty incumbent upon them, and not upon the plaintiffs. The latter had nothing to do with the employment. It was neither directed by them, nor had they any control over the Railroad Company or its employees. It is true, the defendants had also no control over the Company or its servants; but they were its employers; presumably they paid for its service; and that service was directly and immediately for them. Control of the conduct of an agency is not in all cases essential to liability for the consequences of that conduct. If anyone is to be affected by the acts or omissions of persons employed to do a particular service, surely it must be he who gave the employment. Their acts become his, because done in his service and by his direction. Moreover, a common carrier who undertakes for himself to perform an entire service has no authority to constitute another person or corporation the agent of his consignor or consignee. He may employ a subordinate agency; but it must be subordinate to him, and not to one who neither employs it nor pays it, nor has any right to interfere with it.

“If, then, the Louisville and Nashville Railroad Company was acting for these defendants and performing a service for them, when transporting the packages they had undertaken to convey, as we think must be concluded, it would seem it must be considered their agent. And why is not the reason of the rule, that common carriers cannot stipulate for exemption from liability for their own negligence and that of their servants and agents, as applicable to

the contract made in these cases as it was to the facts that appeared in the case of *R. Co. v. Lockwood*? The foundation of the rule is, that it tends to the greater security of consignors, who always deal with such carriers at a disadvantage. It tends to induce greater care and watchfulness in those to whom an owner intrusts his goods, and by whom alone the needful care can be exercised. Any contract that withdraws a motive for such care, or that makes a failure to bestow upon the duty assumed extreme vigilance and caution more probable, takes away the security of the consignors, and makes common carriers more unreliable. This is equally true, whether the contract be for exemption from liability for the negligence of agencies employed by the carrier to assist him in the discharge of his obligations; though he has no control over them, or whether it be for exemption from liability for a loss occasioned by the carelessness of his immediate servant. Even in the latter case he may have no actual control. Theoretically, he has; but most frequently, when the negligence of his servant occurs, he is not at hand, has no opportunity to give directions, and the negligent act is against his will. He is responsible because he has put the servant in a place where the wrong could be done. It is quite as important to the consignor and to the public, that the subordinate agency, though not a servant under immediate control, should be held to the strictest care, as it is that the carrier himself and the servants under his orders should be.

“For these reasons, we think it is not admissible, to construe the exception in the defendants’ bills of lading as excusing them from liability for the loss of the packages by fire, if caused by the negligence of the Railroad Company to which they confided a part of the duty they had assumed.

“There are other reasons of weight which deserve consideration. Express companies frequently carry over long routes, at great distances from the places of destination of the property carried, and from the residence of its owners. If in the course of transportation a loss occurs through the want of care of managers, of public conveyances which they employ, the carriers of their servants are at hand. They are best acquainted with the facts. To them those managers of the public conveyances are responsible, and they can obtain redress much more conveniently than distant owners of the property can. Indeed, in many cases, suits by absent owners would be attended with serious difficulties. Besides, express companies make their own bargains with the companies they employ, while they keep the property in their own charge, usually attended by a messenger. It was so in the present case. The defendants had an arrangement with the Railroad Company, under which the packages of money, inclosed in an iron safe, were put into an apartment of a car set apart for the use of the Express Company. Yet the safe containing the packages continued in the custody of the messenger. Therefore, as between the defendants and the Railroad Company, it may be doubted whether the relation was that of a common carrier to his consignor, because the Company had not the packages in charge. The department in the car was the defendants for the time being; and, if the defendants retained the custody of the packages carried, instead of trusting them to the Company, the latter did not insure the carriage. *Miles v. Cattle*, 6 Bing. 743; *Tower v. R. Co.*, 7 Hill (N. Y.) 47 Redf. Rw. Sec. 74.



"Now, can it be a reasonable construction to give to the contract between the defendants and the plaintiffs, that the former, who had agreed to carry and deliver the packages at Louisville reserved to themselves the right to employ a subordinate carrier, arrange with him that he should be responsible only for ordinary vigilance against fire, and by that arrangement relieve themselves from what without it would have been their clear duty. Granting that the plaintiffs can sue the Railroad Company for the loss of the packages through its fault, their right comes through their contract between it and the defendants. They must claim through that. *N. J. S. Nav. Co. v. Bk.*, 6 How. 381. Had the packages been delivered to the charge of the Railroad Company without any stipulation for exemption from the ordinary liability of carriers, it would have been an insurer both to the Express Company and to the plaintiffs. But as they were not so delivered, the right of the plaintiffs to the extremest constant vigilance during all stages of the carriage is lost, if the defendants are not answerable for the negligence of the Railroad Company, notwithstanding the exception in their bills of lading. We cannot close our eyes to the well known course of business in the country. Over very many of our railroads the contracts for transportation of goods are made, not with the owners of the roads, nor with the railroad companies themselves, but with transportation agencies or companies which have arrangements with the railroad companies for the carriage. In this manner, some of the responsibilities of common carriers are often sought to be evaded; but in vain. Public policy demands that the right of the owners to absolute security against the negligence of the carrier, and of all persons engaged in performing the carriers' duty, shall not be taken away by any reservation in the carrier's receipt, or by any arrangement between him and the performing company."

Although a carrier cannot legally stipulate for *exemption* from circumstances of his own negligence or that of his servants, or its connecting carriers, it is the law of the United States courts, that a carrier may, by special contract, validly entered into, *limit* his common-law liability.

See "*Limitation of common carrier's liability at common law for loss, damage, or injury to property transported in interstate commerce*," Section 2001, *post*.

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1. *New York C. Rd. Co. v. Lockwood* (1873), 17 Wall. 357, 21 L. Ed. 627.

2. *Planters National Bank of Louisville v. Adams Express Co.* (1876), 23 L. Ed. 872, 875, 93 U. S. 174.

#### 2000-Q. LIABILITY OF CARRIER AS A WAREHOUSEMAN.<sup>1</sup>

Defendant railroad company, as the last connecting carrier, received a carload of copper ingots, shipped under a bill of lading providing that "property not removed by shipper entitled to receive it within 48 hours \* \* \* after notice of its arrival \* \* \* may be kept in car \* \* \* or warehouse subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only." Defendant's tariff schedule, duly filed and posted as required by law, and which in accordance with the Interstate Commerce Act as amended contained rules and regulations governing terminal privileges and charges, provided that "when delivery of cars consigned or ordered to private industrial spur tracks cannot be made on account of the act,

neglect, or inability of the consignee to receive them, delivery will be considered to have been made when the cars are tendered." On arrival of the car of copper the private track of the consignee was fully occupied, and defendant left the car on its connecting side track, and notified the consignee that the car was at its disposition, subject to the payment of a demurrage charge after the free time allowed by the rules of the company. Six days later the consignee paid the demurrage charges and the car was moved upon its track, when it was found that one of the seals was broken and that a part of the copper was gone, although, when inspected by defendant's yard watchman the evening before, the seals were secure. *Held*, that defendant's liability was that of warehouseman only.<sup>2</sup>

Under the rule of the Federal courts, a warehouseman is liable only for negligence, the burden of proving which rests on the party alleging it, and is not shifted by proof merely of loss or destruction of property in charge of the warehouseman.<sup>3</sup>

As it is the duty of the warehouseman to deliver upon proper demand, his failure to do so, without excuse has been regarded as making a *prima facie* case of negligence. If, however, it appears that the loss is due to fire, that fact in itself, in the absence of circumstances permitting the inference of lack of reasonable precautions, does not suffice to show neglect, and the plaintiff having the affirmative of the issue, must go forward with the evidence.<sup>4</sup>

1. There are several kinds of bailments involving different rights and duties on the part of the bailor and bailee. According to the classification of the civil law, set forth by Lord Holt and modified by Sir William Jones, "bailments" are of five kinds. These divisions, together with their Roman titles and definitions may thus be stated: I. *Depositum*, which is a naked bailment of personal property to be kept for the bailor without recompense, and to be delivered again according to the special purpose of the bailment. II. *Mandatum*, a mandate, or the bailment of personal property as to which the bailee undertakes without recompense to do something. III. *Commodatum*, a Loan for Use, or the bailment of personal property to be borrowed or used by the bailee for a time without reward; but in our law, of course, to be restored *in specie*. IV. *Pignus*, a Pledge or Pawn, or the bailment of personal property to a creditor as security for some debt or engagement. V. *Locatio-Conductio*, a Hiring, which is always for some reward. This last bailment, according to Mr. Judge Story, admits of four subdivisions: (1) *Locatio rei*, or the hiring of a thing for use; (2) *Locatio operis faciendi*, or the hiring of work and labor upon a thing; (3) *Locatio custodiae*, or the hiring of care and services to be performed or bestowed on the thing delivered; (4) *Locatio operis mercium vehendarum*, or the hiring of the carriage of goods from one place to another.

The mutual rights and liabilities of bailor and bailee turn essentially upon the contemplation of recompense or no recompense. Bailments at common law, according to Mr. Judge Story, are grouped under three heads: (1) Those for the sole benefit of the party on the bailor's side, or, at least, without benefit to the bailee; (2) Those for the sole benefit of the party on the bailee's side; (3) Those for the benefit of both parties. In the first two instances, the benefit designed is unilateral; in the third, bi-lateral or reciprocal.

(1) Bailments for the bailor's sole benefit; or without benefit to the bailee includes *depositum* and *mandatum*.

(2) Bailments for the bailee's sole benefit is the *commodatum*.

(3) Ordinary bailments for mutual benefit include *locatio custodiae*, *locatio operis faciendi*, *locatio operis mercium vehendarum*, *locatio rei* and *pignus*.

(4) The exceptional bailments include innkeepers, a branch of *locatio custodiae*, and postmasters and common carriers, a branch of *locatio operis mercium vehendarum*.

As to what care and diligence towards the property in his charge is exacted of a particular bailee, or what the standard of responsibility, the elementary principle is that, independently of some special contract by which the parties have regulated the matter for themselves consistently with public policy, or of some act of legislation, a bailee's care and diligence must be according to the recompense intended.

The standard of measurement as to care is *slight*, *ordinary*, and *great* (or more than ordinary) to meet the case; and so inversely for negligence, *gross* (or more than ordinary), *ordinary*, and *slight*.—If indeed one may say that negligence, in a logical sense, is ever permissible. (Schouler's Bailments and Carriers).



Strictly speaking, these expressions are indicative rather of the degree of care and diligence which is due from a party, and which he fails to perform, than of the amount of inattention, carelessness, or stupidity which he exhibits. If "very little care" is due from him, and he fails to bestow that little, it is called "gross negligence."

If "very great care" is due, and he fails to come up to the mark required, it is called "slight negligence." And if "ordinary care" is due, such as a prudent man would exercise in his own affairs, failure to bestow that amount of care is called "ordinary negligence."

The Federal courts recognize no distinction between "gross" and "ordinary" negligence. In *New York C. & H. R. Rd. Co. v. Lockwood* (1873), 17 Wall. 357, 21 L. Ed. 627, 641, the United States Supreme Court, per Mr. Justice Bradley stated: "We have already adverted to the tendency of judicial opinion adverse to the distinction between gross and ordinary negligence. Strictly speaking, these expressions are indicative rather of the degree of care and diligence which is due from a party and which he fails to perform, than of the amount of inattention, carelessness or stupidity which he exhibits. If very little care is due from him, and he fails to bestow that little it is called gross negligence. If very great care is due, and he fails to come up to the mark required, it is called slight negligence. And if ordinary care is due, such as a prudent man would exercise in his own affairs, failure to bestow that amount of care is called ordinary negligence. In each case the negligence, whatever epithet we give it, is failure to bestow the care and skill which the situation demands, and hence it is more strictly accurate, perhaps, to call it simply 'negligence.' And this seems to be the tendency of modern authorities. 1 Sm. L. Cas., 453, 7th Am. ed.; Story, Bail., Sec. 571; *Wyld v. Pickford*, 8 Mees. & W. 460; *Hinton v. Dibbin*, 2 Q. B. 661; *Wilson v. Brett*, 11 Mees. & W. 115; *Beal v. So. Dev. R. Co.*, 3 Hurlst. & Colt, 337; *Grill v. Iron Screw Coll. Co.*, Law. Rep. 1 C. P. 600; *Philadelphia & R. Ry. Co. v. Derby*, 14 How. 486; *The New World v. King*, 16 How. 474. If they mean more than this, and seek to abolish the distinction of degree of care, skill, and diligence required in the performance of various duties and the fulfilment of various contracts, we think they go too far; since the requirement of different degrees of care in different situations, is too firmly settled and fixed in the law to be ignored or changed. The compilers of the French Civil Code undertook to abolish these distinctions, by enacting that 'every act whatever, of man, that causes damage to another, obliges him by whose fault it happened to repair it.' Art. 1382. Toullier, in his commentary on the Code, regards this as a happy thought, and a return to the law of nature. Vol. 6, p. 243. But such an iron rule is too regardless of the foundation principles of human duty, and must often operate with great severity and injustice."

In *Milwaukee & St. P. Ry. Co. v. Arms*, (1876), 91 U. S. 489, 23 L. Ed. 374, 376, (cited in *Pierce v. Wells, Fargo & Co.* [1911], 189 Fed. Rep. 561, 110 C. C. A. 645; affirmed, *Pierce v. Wells, Fargo & Co.* [1915], 236 U. S. 278, 35 Sup. Ct. Rep. 351, 59 L. Ed. 576) the United States Supreme Court, per Mr. Justice Davis, stated: "It is insisted, however, that where there is gross negligence, the jury can properly give exemplary damages. There are many cases to this effect. The difficulty is, that they do not define the term with any accuracy; and, if it be made the criterion by which to determine the liability of the carrier beyond the limit of indemnity it would seem that a precise meaning should be given to it. This the courts have been embarrassed in doing, and this court has expressed its disapprobation of these attempts to fix the degrees of negligence by legal definitions. In *The New World v. King*, 16 How. 474, Mr. Justice Curtis, in speaking of the three degrees of negligence, says:

"It may be doubted if these terms can be usefully applied in practice. Their meaning is not fixed, or capable of being so. One degree thus described not only may be confounded with another, but it is quite impracticable exactly to distinguish them. Their signification necessarily varies according to circumstances; to whose influence the courts have been forced to yield, until there are so many real exceptions that the rules themselves can scarcely be said to have a general operation. If the law furnishes no definition of the terms "gross negligence" or "ordinary negligence" which can be applied in practice, but leaves it to the jury to determine in each case what the duty was, and what omissions amount to a breach of it, it would seem that imperfect and confessedly unsuccessful attempts to define that duty had better be abandoned."

"Some of the highest English courts have come to the conclusion that there is no intelligible distinction between ordinary and gross negligence. Redf. Car. Sec. 376. Lord Cranworth, in *Wilson v. Brett*, 11 M. & W. 113, said that gross negligence is ordinary negligence with a vituperative epithet; and the Exchequer Chamber took the same view of the subject. *Beal v. R. Co.*, 3 H. & C. 337; *Grill v. Gen. Iron Screw Collier Co.*, L. R. 1 C. P. 1865-66, p. 600, was heard in the Common Pleas, on appeal. One of the points raised was the supposed misdirection of the Lord Chief Justice who tried the case, because he had made no distinction between gross and ordinary negligence. Justice Willes, in deciding the point, after stating his agreement with the dictum of Lord Cranworth, said:

"Confusion has arisen from regarding "negligence" as a positive instead of a negative word. It is really the absence of such care as it was the duty of the defendant to use. "Gross" is a word of description, and not of definition; and it would have been only introducing a source of confusion to use the expression "gross negligence" instead of the equivalent—a want of due care and skill in navigating the vessel—which was again and again used by the Lord Chief Justice in his summing up."

"'Gross negligence' is a relative term. It is doubtless to be understood as meaning a greater want of care than is implied by the term 'ordinary negligence;' but, after all, it means the absence of the care that was necessary under the circumstances. In this sense the collision in controversy was the result of gross negligence, because the employees of the Company did not use the care that was required to avoid the accident. But the absence of this care, whether called gross or ordinary negligence, did not authorize the jury to visit the Company with damages beyond the limit of compensation for the injury actually inflicted. To do this, there must have been some willful misconduct, or that entire want of care which would raise the presumption of a conscious indifference to consequences. Nothing of this kind can be imputed to the persons in charge of the train; and the court, therefore, misdirected the jury. For this reason, the judgment is reversed, and a new trial ordered."

Warehousemen, wharfingers and agistors come under the category of the bailment for mutual benefit known as *Locatio custodiae*, which is a subdivision of *Locatio-conductio*, or the hired custody of a thing. Warehousemen, familiarly applied to such as, for reward, keep goods and merchandise in storage; wharfingers, who for reward, undertake the charge of goods and merchandise on wharves; and agistors, so-called, who, for reward, take care of domestic animals.

With reference to the standard of care and diligence of the warehouseman, wharfinger and agistor, the legal obligations of such a hired bailee is that he ought, in good faith, to perform the intended service about the chattel, in the exercise throughout of the requisite degree of care and diligence, whether it relate to mere custody, or work of a more active sort. The requisite degree which our law prescribes is styled "ordinary"; and the ordinary and average care and diligence is such which prudent persons of the same class are wont to exercise towards such property or in the management of their own property under like circumstances. It follows that, for loss or injury of the thing, caused by the hired bailee's ordinary negligence, or failure to bestow this ordinary or average care and diligence, he must respond. Such is the criterion in the absence of special modifying stipulations. If, therefore, in the course of his honest exercise of average diligence, while performing the bailment service, the chattel perish from some internal defect, or through the operation of natural causes, or, generally, because of inevitable accident, the bailee will stand acquitted of blame. So, too, if it be destroyed or captured by a public enemy or by mobs or rioters. But the intervention of irresistible force, whether of human or divine agency, excuses no hired bailee, whose wrongful connivance or culpable exposure, or breach of contract or remissness of duty in any respect, whether for preventing the calamity, or lessening its injurious effects, proves to have proximately occasioned the mischief. Loss by fire, burglary, robbery, and theft give rise to similar considerations, though less likely to afford a positive excuse; and the bailee's good faith and due diligence have especial reference to precautionary measures, repelling force, and seeking to make the loss from any such cause as light as possible. Ordinary diligence is a question of fact, in every case, to be determined upon all the circumstances. For such injury as resulted directly from the bailee's negligence, the bailee must respond, notwithstanding an accident afterwards occurs which must, in any event have ruined the thing; while, on the other hand, his act of carelessness, which in no wise occasioned the disaster, does not make him answerable. In short, the doctrine of proximate and remote cause here applies; with, however, much favor to any bailee who can establish, on his behalf, that the loss or injury occurred under circumstances which naturally impute no blame to the man of average care and diligence; and subject, of course, to the general maxim, that the party who charges culpable negligence has upon the whole the burden of proof. (Schouler's Bailments and Carriers).

The common carrier is the extraordinary or exceptional bailment for mutual benefit, and is a subdivision of the bailment *Locatio-conductio* known as *Locatio operis mercium vehendarum*, for the hire of its carriage, or the carriage of the thing from place to place for reward.

A common or public carrier is one who undertakes as a business, for hire or reward, to carry from one place to another the goods of all persons who may apply for such carriage, provided the goods be of the kind which he professes to carry, and the person so applying will agree to have them carried upon the lawful terms prescribed by the carrier; and who, if he refuses to carry such goods for those who are willing to comply with his terms, becomes liable to an action by the aggrieved party for such refusal. (Hutchinson on Carriers.)

According to the above divisions and definitions the carriage of goods is always either a *mandate*, when it is gratuitous or without compensation to the carrier, or a *hiring*, when he is paid for the service; and under these heads, the duties and obligations of carriers of goods were formerly treated in connection with the general subject of bailments and as a part of it. But it must be evident from this statement that, while this classification of the different kinds of bailments according to their various purposes may be extremely convenient for the treatment of the general subject in all its different branches, it is almost wholly unimportant in connection with the subject of the duties and liabilities of the carriers of goods, except to show in what particular character of bailment the carrier holds the goods intrusted to him, and that, which is equally apparent, most of the general principles of the bailments of goods have little or no application to questions in which he may be concerned. Besides, the extraordinary responsibilities which are imposed by the law upon common or public carriers of goods for hire, who are by far the most important agents of commerce in modern times, are founded upon reasons which have no



application to ordinary bailments, and in fact make such carriers exceptions from the general rules and principles by which the liability of other bailees is to be tested.

It will, therefore, be found that while private carriers, whether with or without reward, are strictly bailees and nothing more, and that questions as to their liability are to be determined by the ordinary rules which govern the responsibility of bailees, the common carrier of goods stands upon an entirely different footing, and when questions as to his liability for the loss of goods or their injury whilst in his custody for the purpose of carriage arise, they must be decided upon principles peculiarly applicable to them, and which have no application to any other kind of bailment except that to the innkeeper by his guest. In all other cases of bailment, for instance, the very foundation of the bailee's liability is negligence in some degree, either greater or less, according to the particular nature of the bailment, and before he can be made liable the requisite negligence must be shown. But the question of negligence when the purely common-law relation of common carrier to the goods exists, is ordinarily wholly foreign to the inquiry whether such a carrier is to be held liable for their loss or injury, and, as will hereafter be seen, evidence on his part of the most exact diligence will be wholly irrelevant and inadmissible. If, for example, the private carrier or any other ordinary bailee be robbed of the goods, or if they should be accidentally destroyed by fire or any other calamity, without negligence on his part, the law will excuse him; but if they be taken from a common carrier by a force ever so irresistible less than the public enemy, or if they should be destroyed by fire ever so unavoidable, he will nevertheless be liable for them. He is an insurer of the goods against all losses except those caused by the act of God, the public enemy, the law, the owner, or the inherent nature of the goods. His extraordinary liability rests upon a rule of law, applicable to but two classes, which had its rise in reasons of public policy, and not upon the contract of bailment, although without the bailment the liability cannot exist.

Still, questions of negligence are of constant occurrence in dealing with the subject of the liability of carriers. The private carrier cannot be held liable unless it be shown that he has been guilty of either negligence or misfeasance which has occasioned the loss. The liability of the passenger carrier for an injury to his passenger generally depends exclusively upon the question of negligence. And, although the common carrier of goods, when he is not protected by contract, is liable for the consequences of every casualty resulting in the loss of the goods, except such as are excepted by the law as above stated, yet when he attempts to exonerate himself from liability by showing that the cause of the loss comes within one or the other of these exceptions, he may be met by proof that, but for his negligence, the occasion of the loss would have been avoided. So, if the goods be of a perishable nature, and he attempt to defend himself against liability for their loss by showing that it was attributable to the principle of inherent infirmity and decay, as he may do, it may be shown that he failed to bestow upon them the necessary care to arrest or prevent such decay, and was therein guilty of negligence but for which the loss would not have occurred. And when he has made exceptions to his liability by his contract in addition to those allowed him by the law, and undertakes to screen himself from liability for a loss by showing that it was produced by one of the excepted causes, it will be a complete avoidance of his defense to show that he did not use the proper diligence to prevent or to escape from the danger. (Hutchinson on Carriers).

On the question of the status of the common carrier before or after public vocation and the modification of its liability from that of a simple bailee to that of an insurer of the goods in transit, and vice versa, the following interesting observations are found in Schouler's *Bailments and Carriers*:

"It is, however, observable that carriers are often to be deemed at a certain posture of the case warehousemen or simple custodians with respect to property which has been placed in their charge. And, whether one holds himself out as blending these two professions in practice or not, a person or company exercising the public vocation, whose custody of goods continues long before or long after the transit, should be charged, not as common carrier, but in the less onerous capacity of a hired or gratuitous bailee. Railway freight depots, where much property is necessarily held, from one cause or another, on long storage, furnish instances where the distinction is applicable. In all such cases the just intent of the transaction must guide us towards determining what bailment relation is sustained at any particular stage. For while every public carrier may doubtless refuse to receive property when tendered him for transit unreasonably early, such carrier may accept, if he choose, on the just understanding, express or implied, that, until he is prepared to load aboard for the journey, his own liability shall be simply that of warehouseman or hired custodian, or, if the case were freed utterly from the consideration of recompense (a conclusion which ought reluctantly to be accepted in any case where advance facilities are provided for goods which are ultimately to be transported for a recompense), as a gratuitous bailee. This previous storage may be of much convenience to the bailor; yet early delivery of freight is not without its advantages to those who are to pack and stow it for the transit; and hence, as a rule, the carrier who accepts is taken to accept for present transportation at his own convenience, and accordingly as a party at once liable as common carrier, even though the goods lie at the wharf, on the platform, in the freight-house, at

the depot, or elsewhere, or are awaiting some preliminary preparation for the transit, and are not yet laden or stowed in condition for the transit to commence.

"This rule of carriage delivery and acceptance, we should feel assured, is no arbitrary or capricious rule, but one which is shaped by actual circumstances. And wherever the bailment relation which follows the transfer of possession imports, upon all the evidence, no duty of immediate or present transportation on the bailee's part, but rather that he shall await his consignor's further acts or instructions before putting the goods on their course, and the delay is for the customer's convenience instead of his own, or by way of a license to use his premises for shelter, the position of the bailee, though he be a public carrier by profession, will continue meantime that of warehouseman or simple bailee, and not of carrier.

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"We are in the first place to observe that one may hold goods as common carrier or insurer for a transit, but, for various reasons, retain them with the less onerous risks of a warehouseman or ordinary bailee for hire, at the place of destination, without ever having actually delivered over or parted with possession. This is a peculiarity not often noticeable in other bailments, but here constantly to be borne in mind; so that, if, for instance, goods which had safely reached the journey's end were accidentally burnt up, or plundered by a mob, before that final delivery over which legally terminates a bailment, a court would often be perplexed to say whether the present bailee were liable or no for the loss; or, in other words, whether his standard of responsibility should be deemed exceptional or ordinary.

"To determine such a question, it is material to consider whether the common carrier is legally bound as such to make delivery over, or the consignee must come and fetch them; and, in the latter case, whether notice must be given and sufficient time allowed to elapse after arrival of the goods to enable such a party fairly to perform his duty. In both respects our law is far from being exact, and local usage sways the English and American courts considerably, as we now proceed to show. Even where the carrier was bound naturally to make delivery, he often becomes by reason of the consignee's refusal to receive and pay, or where the consignee is dead or cannot be found, a bailee of the ordinary sort, after fulfilling his carrier duty.

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"As we have seen, a carrier may become himself the warehouseman or depository of goods left upon his hands after his transportation duty terminates; or he may constitute some responsible third party the warehouseman. In the latter case, the nature of the carrier's delivery must determine on whose behalf it is made; for, if the consignee fails, after reasonable opportunity, to take the goods, the carrier has his election to make the third party his own agent, for whose negligence he shall stand responsible, or to divest himself of such risks by making such third party agent of the owner.

"Where the carrier himself becomes warehouseman of the goods, personally or by his own agent, it is of importance to note whether the transportation duty has ended, or not, upon the principles already discussed. For, in the one case, he remains no longer chargeable as insurer, and under the carriage contract, but must, for loss or injury occasioned while acting in this new capacity, be held answerable only as would any other ordinary bailee for hire, supposing the bailment to be with intended recompense, or as a gratuitous bailee, if the trust be without recompense. In the other case, however, and where the transportation duty has not been fully performed, his liability is essentially that of common carrier, or such as makes the bailee answerable at the common law for losses by rioters, accidental fires, and the like; which rule must further apply where the carrier deposits the goods at some intermediate place on his route, or sends by a conveyance different from that agreed upon, or has carried them carelessly out of the way, or, after their arrival at the point of destination, holds them still, without having as yet given the notice or reasonable opportunity of removal, or made the personal delivery which was incumbent upon him."

2. *United Metals Selling Co. v. Pryor* (1917), 243 Fed. Rep. 91, 155 C. C. A. 621. Writ of certiorari denied. *United Metals Selling Co. v. Pryor* (1917), 245 U. S. 662, 38 Sup. Ct. Rep. 61, 62 L. Ed. 536.
3. *Ibid.*
4. *Southern Ry. Co. v. Prescott* (1916), 240 U. S. 632, 60 L. Ed. 836; 36 Sup. Ct. Rep. 469; citing, *Cau v. Texas & P. Ry. Co.* (1904), 194 U. S. 427, 24 Sup. Ct. Rep. 663, 48 L. Ed. 1053; *Western Transportation Co. v. Downer* (1871), 11 Wall. 129, 20 L. Ed. 160; *De Grau v. Wilson* (1883), 17 Fed. Rep. 698, affirmed, *De Grau v. Wilson* (1884), 22 Fed. Rep. 560.



**2001. Limitation of common carriers' liability at common law for loss, damage or injury to property transported in interstate commerce.**

**2001-A. A CONTRACT EXEMPTING A CARRIER FROM LIABILITY FOR NEGLIGENCE IS AGAINST PUBLIC POLICY AND VOID.**

That a common carrier cannot exempt itself from liability for his own negligence or that of his servants is elementary.<sup>1</sup>

In *Hart v. Pennsylvania Rd. Co.*<sup>2</sup> the United States Supreme Court, per Mr Justice Blatchford, stated: "We are, therefore, brought back to the main question. It is the law of this court, that a common carrier may, by special contract, limit his common law liability; but that he cannot stipulate for exemption from the consequences of his own negligence or that of his servants. *Nav. Co. v. Merchants' Bk.*, 6 How. 344; *York Co. v. R. R. Co.*, 3 Wall. 107 (70 U. S. XVIII., 170); *R. R. Co. v. Lockwood*, 17 Wall. 357 (84 U. S. XXI., 627); *Exp. Co. v. Caldwell*, 21 *Id.*, 264 (88 U. S. XXII., 556); *R. R. Co. v. Pratt*, 22 *Id.*, 123 (89 U. S. XXII., 827); *Bank v. Exp. Co.*, 93 U. S. 174 (XXIII., 872); *R. Co. v. Stevens*, 95 *Id.*, 655 (XXIV., 535).

"In *York Co. v. R. R. Co.* (*supra*) a contract was upheld exempting a carrier from liability for loss by fire, the fire not having occurred through any want of due care on his part. The Court said, that, 'A common carrier may prescribe regulations to protect himself against imposition and fraud, and fix a rate of charges proportionate to the magnitude of the risks he may have to encounter.'

"In *R. R. Co. v. Lockwood* (*supra*) the following propositions were laid down by this Court: 1. A common carrier cannot lawfully stipulate for exemption from responsibility when such exemption is not just and reasonable, in the eye of the law. 2. It is not just and reasonable, in the eye of the law, for a common carrier to stipulate for exemption from responsibility for the negligence of himself or his servants. 3. These rules apply both to carriers of goods and to carriers of passengers for hire and with special force to the latter. The basis of decision was, that the exemption was to have applied to it the test of its justness and reasonable character. It was said, that the contracts of the carrier, must rest upon their fairness and reasonableness; and that it was just and reasonable that carriers should not be responsible for losses happening by sheer accident, nor chargeable for valuable articles liable to be damaged, unless apprised by their character of value. That case was one of a drover traveling on a stock train on a railroad, to look after his cattle, and having a free pass for that purpose, who had signed an agreement taking all risk of injury to his cattle and of personal injury to himself, and who was injured by the negligence of the railroad company or its servants.

"In *Exp. Co. v. Caldwell* (*supra*), this Court held that an agreement, made by an express company, a common carrier in the habit of carrying small packages, that it should not be held liable for any loss or damage to a package delivered to it, unless claim should be made therefor within ninety days from its delivery to the company, was an

agreement which the company could rightfully make. The Court said: 'It is now the settled law, that the responsibility of a common carrier may be limited by an express agreement made with his employer at the time of his accepting goods for transportation, provided the limitation be such as the law can recognize as reasonable and not inconsistent with sound public policy.' It was held that the stipulation as to the time of making a claim was reasonable and intrinsically just, and could not be regarded as a stipulation for exemption from responsibility for negligence, because it did not relieve the carrier from any obligation to exercise diligence, fidelity and care.

"On the other hand in *Bank v. Exp. Co. (supra)*, it was held that a stipulation by an express company that it should not be liable for loss by fire could not reasonably be construed as exempting it from liability for loss by fire occurring through the negligence of a railroad company which it had employed as a carrier.

"To the views it had announced in these cases we adhere. But there is not in them any adjudication on the particular question now before us. It may, however, be disposed of on principles which are well established, and which do not conflict with any of the rulings of this Court. As a general rule and in the absence of fraud or imposition, a common carrier is answerable for the loss of a package of goods though he is ignorant of its contents and though its contents are ever so valuable, if he does not make a special acceptance. This is reasonable, because he can always guard himself by a special acceptance, or by insisting on being informed of the nature and value of the articles before receiving them. If the shipper is guilty of fraud or imposition, by misrepresenting the nature or value of the articles, he destroys his claim to indemnity because he has attempted to deprive the carrier of the right to be compensated in proportion to the value of the articles and the consequent risk assumed, and what he has done has tended to lessen the vigilance the carrier would otherwise have bestowed. 2 Kent Com. 603, and cases cited; *Relf v. Rapp*, 3 Watts & S., 21; *Dunlap v. Steamboat Co.*, 98 Mass. 371; *R. R. Co. v. Fraloff*, 100 U. S., 24 (XXV., 531). This qualification of the liability of the carrier is reasonable and is as important as the rule which it qualifies. There is no justice in allowing the shipper to be paid a large value for an article which he has induced the carrier to take at a low rate of freight on the assertion and agreement that its value is a less sum than that claimed after a loss. It is just to hold the shipper to his agreement, fairly made, as to value, even where the loss or injury has occurred through the negligence of the carrier. The effect of the agreement is to cheapen the freight and secure the carriage, if there is no loss; and the effect of disregarding the agreement, after a loss, is to expose the carrier to a greater risk than the parties intended he should assume. The agreement as to value, in this case, stands as if the carrier had asked the value of the horses, and had been told by the plaintiff the sum inserted in the contract.

"The limitation as to value has no tendency to exempt from liability for negligence. It does not induce want of care. It exacts from the carrier the measure of care due to the value agreed on. The carrier is bound to respond in that value for negligence. The compensation for carriage is based on that value. The shipper is estopped from saying



that the value, is greater. The articles have no greater value, for the purposes of contract of transportation, between the parties to that contract. The carrier must respond for negligence up to that value. It is just and reasonable that such a contract, fairly entered into and where there is no deceit practiced on the shipper, should be upheld. There is no violation of public policy. On the contrary, it would be unjust and unreasonable and would be repugnant to the soundest principles of fair dealings and of the freedom of contracting, and thus in conflict with public policy, if a shipper should be allowed to reap the benefit of the contract if there is no loss, and to repudiate it in case of loss.

"This principle is not a new one. In *Gibbon v. Paynton*, 4 Burr. 2298, the sum of 100 pounds was hidden in some hay in an old nail-bag and sent by a coach and lost. The plaintiff knew of a notice by the proprietor that he would not be answerable for money unless he knew what it was, but did not apprise the proprietor that there was money in the bag. The defense was upheld, *Lord Mansfield* saying: 'A common carrier, in respect of the premium he is to receive, runs the risque of the goods, and must make good the loss, though it happen without any fault in him, the reward making him answerable for their safe delivery. His warranty and insurance is in respect of the reward he is to receive, and the reward ought to be proportionable to the risque. If he makes a greater warranty and insurance, he will take greater care, use more caution and be at the expense of more guards or other methods of security; and therefore, he ought, in reason and justice, to have a greater reward.' To the same effect is *Batson v. Donovan*, 4 B. & Ald. 21.

"The subject-matter of a contract may be valued, or the damages in case of a breach may be liquidated in advance. In the present case, the plaintiff accepted the valuation as just and reasonable. The bill of lading did not contain a valuation of all animals at a fixed sum for each, but a graduated valuation according to the nature of the animal. It does not appear that an unreasonable price would have been charged for a higher valuation.

"The decisions in this country are at variance. The rule which we regard as the proper one in the case at bar is supported in *Newberger v. Howard*, 6 Phila., 174; *Squire v. R. R. Co.*, 98 Mass. 239; *Hopkins v. Westcott*, 6 Blatchf., 64; *Belger v. Dinsmore*, 51 N. Y., 166; *Oppenheimer v. Exp. Co.*, 69 Ill., 62; *Magnin v. Dinsmore*, 56 N. Y. 168, and 62 Id., 35 and 70 Id. 410; *Earnest v. Exp. Co.* 1 Woods, 573; *Elkins v. Trans. Co.* 81 Pa. St. 315; *R. R. Co. v. Henlein*, 52 Ala., 606; *Same v. Same*, 56 Id., 368; *Muser v. Holland*, 17 Blatchf., 412; *Harvey v. R. R. Co.*, 74 Mo., 538; and *Graves v. R. Co.* 137 Mass. 33. The contrary rule is sustained in *Exp. Co. v. Moon*, 39 Miss., 822; *The City of Norwich*, 4 Ben., 271; *U. S. Exp. Co. v. Backman*, 28 Ohio St. 144; *Black v. Goodrich Trans. Co.*, 55 Wise., 319; *Chicago, St. L., & N. O. R. R. Co. v. Abels*, 60 Miss., 1017; *Kansas City R. R. Co. v. Simpson*, 30 Kan. 645; and *Moulton v. R. R. Co.* 31 Minn. 85. We have given consideration to the views taken in these latter cases, but are unable to concur in their conclusions. Applying to the case in hand the proper test to be applied to every limitation of the common law liability of a carrier, its just and reasonable character, we have reached the result indicated.

"In Great Britain, a statute directs this test to be applied to the courts. The same rule is the proper one to be applied in this country, in the absence of any statute."

1. *Adams Express Co. v. Croninger* (1913), 226 U. S. 491, 33 Sup. Ct. Rep. 148, 57 L. Ed. 314, 321; citing, *York Mfg. Co. v. Illinois C. Rd. Co.* (1866), 3 Wall. 107, 18 L. Ed. 170; *New York C. Rd. Co. v. Lockwood* (1873), 17 Wall. 357, 21 L. Ed. 627; *Bank of Kentucky v. Adams Express Co.* (1876), 93 U. S. 174, 23 L. Ed. 872; *Hart v. Pennsylvania Rd. Co.* (1884), 112 U. S. 331, 338, 28 L. Ed. 717, 720, 5 Sup. Ct. Rep. 151; *Kansas City S. Ry. Co. v. Carl* (1913), 227 U. S. 639, 33 Sup. Ct. Rep. 391, 57 L. Ed. 683.
2. *Hart v. Pennsylvania Rd. Co.* (1884), 112 U. S. 331, 5 Sup. Ct. Rep. 151, 28 L. Ed. 717, 720.

2001-B. A CONTRACT EXEMPTING CARRIER FROM ALL LIABILITY FOR LOSS OR DAMAGE TO PROPERTY SHIPPED, EXCEPT BY ITS FRAUD OR NEGLIGENCE.

A provision of a bill of lading exempting the carrier from all liability for loss or damage to the property shipped, unless proved to have been caused by its fraud or the "gross negligence" of itself or its servants, is not contrary to public policy; there being no distinction between gross negligence and ordinary negligence under the decision of the Federal courts.<sup>1</sup>

A common carrier may by a contract fairly entered into with a shipper limit the amount of its liability for negligence, and the validity of such a contract is not affected by the fact that the carrier uses printed bills of lading, which fix an arbitrary value for all packages, having no relation to their real value beyond which it is not to be liable unless a greater value is stated by the shipper and more freight paid, where the facts are fully understood by the shipper who declines to place a valuation on the property, and assents to the limitation in consideration of a reduced rate.<sup>2</sup>

The fixing of the value of property in a bill of lading at less than its actual value for the purpose of limiting the amount of the carrier's liability in case of loss is not a false billing in violation of the Interstate Commerce Act.<sup>3</sup>

In *Pierce Co. v. Wells, Fargo & Co.*<sup>4</sup> the United States Supreme Court held that gross disproportion between the value of an interstate express shipment and the arbitrary value fixed in the express company's receipt does not prevent the application of the rule that the carrier may, under the "Carmack Amendment" of June 29, 1906, limit its liability to an agreed value made to secure the lower of two or more published rates based upon value; that \$50.00 is the limit of recovery from an express company in case of its breach of the duty imposed upon it by the "Carmack Amendment" of June 29, 1906, as the initial carrier of an interstate shipment of four uncrated automobiles, together with an extra automobile body and other automobile parts, where the shipper deliberately and purposely, without imposition or fraud, accepted the express company's receipt, limiting the amount of recovery to \$50, which is the sum named in the filed tariffs as the amount of recovery in the absence of a declaration of a greater value on the part of the shipper, who is given the privilege of paying an increased rate, and having the liability extended to the full value of the goods.



Mr. Justice Day, in delivering the opinion of the court, stated: "The case as made, therefore, presents the question whether one who has deliberately and purposely, without imposition or fraud, accepted a contract of shipment limiting the amount of recovery to \$50 which is the sum named in the filed tariffs as the amount of recovery in the absence of declaration of a greater value on the part of the shipper, who is given the privilege of paying an increased rate and having the liability for the full value of the goods, is entitled in case of loss to recover the full value of the property.

"That contracts for limited liability, when fairly made, do not contravene the settled principles of the common law preventing the carrier from contracting against its liability for loss by negligence (*New York C. R. Co. v. Lockwood*, 17 Wall, 357, 21 L. ed., 627, 10 Am. Neg. Cas. 624), was settled by this court in what is known as the *Hart Case*, 112 U. S. 331, 28 L. ed. 717, 5 Sup. Ct., Rep. 151. In that case a recovery limited to \$1,200 for 6 horses, one shown to be worth \$15,000 and the others from \$3,000 to \$3,500 each, was sustained upon the principle that the contract did not relieve against the carrier's negligence, but limited the amount that might be recovered for such negligence, and it was there held that such contracts, when fairly made, did not contravene public policy. That case has been frequently followed since, and its doctrine applied in construing limited liability contracts in connection with the Carmack amendment to the interstate commerce act, in a series of cases beginning with the *Adams Exp. Co. v. Croninger*, 226 U. S. 491, 57 L. ed. 314, 44, L. R. A. (N. S.) 257, 33 Sup. Ct. Rep. 148. See, in this connection, *Wells F. & Co. v. Neiman-Marcus Co.* 227 U. S. 469, 57 L. ed. 600, 33 Sup. Co., Rep. 267; *Kansas City Southern R. Co. v. Carl*, 227 U. S. 639, 57 L. ed. 683, 33 Sup. Ct., Rep. 391; *Missouri, K. & T. R. Co. v. Harriman*, 227 U. S. 657, 57 L. ed. 690, 33 Sup. Ct., Rep. 397; *Chicago, R. I. & P. R. Co. v. Cramer*, 232 U. S. 490, 58 L. ed., 697, 34 Sup. Ct. Rep. 383; *Boston & M. R. Co. v. Hooker*, 223 U. S. 97, 58 L. ed., 868, L. R. A. 1915B, 450, 34 Sup. Ct., Rep. 526; *Atchison, T. & S. F. R. Co. v. Robinson*, 233 U. S. 173, 58 L. ed., 901, 34 Sup. Ct. Rep. 556.

"The facts detailed show that there was nothing unfair in the contract. It was made between competent parties, dealing at arm's length, and for the purpose, so far as the shipper was concerned, of securing the lower rate, it deliberately took upon itself the risk of lessened recovery in case of loss for the sake of the lower rate.

"Since the act to regulate commerce and its amendments have gone into effect, cases of this character must be decided in view of the provisions of the commerce act and its requirement that the carrier shall file its tariffs and rates, which shall be open to inspection, and shall prescribe rates applicable to all shippers alike, thus to effect one of the main purposes of the law often declared by this court, to require like treatment of all shippers and the charging of uniform rates equally applicable to all under like circumstances. As this court said in one of the earlier cases, considering the limited-liability contracts in connection with the provisions of the interstate commerce act (*Kansas City Southern R. Co. v. Carl*, 227 U. S. 639, 57 L. ed., 683, 33 Sup. Ct. Rep. 391).

"The valuation declared or agreed upon as evidenced by the contract of shipment upon which the published tariff rate is applied

must be conclusive in an action to recover for loss or damage a greater sum \* \* \* To permit such a declared valuation to be overthrown by evidence *aliunde* the contract for the purpose of enabling the shipper to obtain a recovery in a suit for loss or damage in excess of the maximum valuation thus fixed would both encourage and reward undervaluations, and bring about preferences and discriminations forbidden by the law. Such a result would neither be just nor conducive to sound morals or wise policies. The valuation the shipper declares determines the legal rate where there are two rates based upon valuation. He must take notice of the rate applicable, and actual want of knowledge is no excuse.'

"But it is said, and this fact was the basis of the dissenting opinion in the circuit court of appeals, that there was no valuation at all in this case, and that the disproportion between the actual value of the automobiles shipped—about \$15,000—and \$50 demonstrates this fact, and it is insisted that what was done was merely an arbitrary and unreasonable limitation in the guise of valuation. This argument overlooks the fact that the legality of the contract does not depend upon a valuation which shall have a relation to the actual worth of the property. None such was attempted in the *Marcus-Neiman Case*, the *Croninger Case*, or the *Hooker Case*. But the contract embodied in the receipt was sustained in the express company cases, because of the acceptance of the same by the parties as the basis of shipment, and by force of the statute as to the filed tariff and the requirement of the shipper to take notice of its terms and to be bound thereby. In each of those cases the filed tariff showed an opportunity to the shipper to have a recovery in a greater value that was declared, thus making it optional with the shipper to ship at the lower rate, and not to avail himself of the right to greater recovery upon paying the higher rate named in the tariff. As the cases cited have held, as long as the tariff rate remains operative, the alternative rates based on value are deemed to be in force and controlling of the rights of the parties. *Great Northern R. Co. v. O'Connor*, 232 U. S. 508, 58 L. ed., 703, 34 Sup. Ct. Rep. 380; *Boston & M. R. Co. v. Hooker*, 233 U. S., 97, 121, 58 L. ed., 868, 879, L. R. A., 450, 34 Sup. Ct., Rep. 526.

"If the rates were unreasonable it is for the Commission to correct them upon proper proceedings. If this were not so, the interstate commerce act would fail to make effectual one of its prime objects, the prevention of discrimination among shippers. So long as the tariffs are adhered to, shippers under the same circumstances are treated alike.

"Since the cause of the action in this case arose, the Interstate Commerce Commission has dealt with this subject. (*Re. Express Rates*, 28 Inters. Com. Rep. 131), and the fifty-dollar limitation and the classification based upon the valuation not exceeding \$50 have been made applicable only to shipments weighing not more than 100 pounds. 28 Inters. Comm. Rep. 137, 138. Under that weight the recovery is still limited to the sum of \$50 unless a greater value is declared at the time of shipment, and the declared value in excess of the value specified paid for, or agreed to be paid for, under the schedule of charges for excess value. The limitation in the tariffs of \$50 was made in view of the great mass of merchandise of moderate value in shipments received by the company, and for that reason has been permitted in



modified form to remain in the published tariffs by the action of the Interstate Commerce Commission in the matter to which we have referred.

"In the *O'Connor Case*, 232 U. S. 508, and the *Robinson Case*, 233 U. S. 173, above cited, the doctrine of the conclusiveness of the filed rates was said to have no application to attempted fraudulent acts or false billing. We do not perceive how this doctrine can be applicable to the present case. As the statement of facts shows, the transaction was open and above board, the character of the goods was plainly disclosed and known to both parties, and the rate paid was not attempted to be fixed upon actual value alone, but upon a value which the shipper was competent to agree to, in consideration of the lower rate. Indeed, if a recovery for full value was to be permitted in this case, the shipper itself would obtain an undue advantage in recovering such value, when it had purposely and intentionally taken the risk of less responsibility from the carrier, for a lower rate. Such result would bring about the very favoritism which it is the purpose of the commerce act to avoid.

"The suggestion that there is a wrong to other shippers, who value their goods at their real worth, is answered by the fact that this tariff was open to all under the same circumstances, and while it remained in force, any shipper who wished to take the risk of a recovery for very much less than the value of his goods might have the benefit of the shipment at the reduced rate. The contention that the carrier should have been held to account for the value of what was left of the automobiles after the wreck and fire does not seem to be presented by the pleadings, and was not involved in the disposition of the case ultimately made upon the contract of shipment. We find no error in the Court's withholding that issue from the jury in the condition of the record.

"Finding no error in the judgment of the Circuit Court of Appeals, it is affirmed."<sup>5</sup>

In *Missouri, K. & T. Ry. Co. v. Harriman Bros.*<sup>6</sup> the United States Supreme Court, per Mr. Justice Lurton, stated: "That the shipper had the choice of two rates, one 20 per cent higher than the other, upon this shipment, is shown by the provisions of the shipping contract and the tariff sheets referred to therein. That the difference between the two rates was not unreasonable, the one when the cattle were not valued and the other when their value was declared, is to be assumed from the acceptance of the rates as filed with the Commission. That the 'portion' of the rate sheets in evidence does not include the 'Current Live Stock Contract' referred to in the part filed is of no vital significance. The objection was not made below. The case was proceeded with in the State Court upon the hypothesis that the 'Current Live Stock Contract,' referred to in the 'portion' of the rate sheets actually in evidence, was the live stock contract executed by the parties, and had been duly filed as part of the rate sheets. It is too late to make an objection here which, if made below, might have been remedied by filing all instead of a 'portion' of the filed tariff. *Texas & P. R. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, 51 L. ed. 553, 27 Sup. Ct. Rep. 350, 9 Am. Cas. 1075. In any event, the rate sheets do provide for a choice between two rates, one with and one without a declared valuation. In one case the carrier is liable for whatever loss or damage the shipper sustains, and in the other case its liability is limited to the valuation up-

on which the rate was based. The ground upon which the shipper is limited to the valuation declared is that of estoppel, and presupposes the valuation to be one made for the purpose of applying the lower of two rates based upon the value of the cattle. This whole matter has been so fully considered in *Adams Exp. Co. v. Croninger*, 226 U. S. 491, ante. 314, 33 Sup Ct. Rep. 148, and *Kansas City Southern R. Co. v. Carl*, just decided (227 U. S. 639, ante, 683, 33 Sup Ct. Rep. 391), that we only need to refer to the opinions in those cases, without further elaboration.

“That the Trial Court and the Court of Civil Appeals erred in holding this stipulation null and void because forbidden by either the law or policy of the State of Texas, or by the 20th section of the act of June 29, 1906, is no longer an open question since the decisions of this court in the cases just referred to.

“Nor is there anything upon the face of this contract, when read in connection with the rate sheets referred to therein (of which the defendants in error were compelled to take notice, not only because referred to in the contract signed by them, but because they had been lawfully filed and published), which offends against the provisions of the 20th section of the act of June 29, 1906.

“Neither is the valuation of cattle at \$30 and \$20 per head subject to impeachment as upon its face arbitrary and unreasonable. The valuation in this case was made by the consignor himself. The contract upon this point reads, ‘And said shipper represents and agrees that his said live stock \* \* \* do not exceed in value these prices,’ referring to the schedule set out immediately above that declaration. That the cattle were not other than average or ordinary cattle, of no peculiar value as ‘show cattle,’ or otherwise, is indicated by the character of the printed form of contract signed by the consignor. After reciting that the company had two rates on live stock, it proceeds,—‘Ordinary live stock transported under this special contract,’ etc.

“The contract here involved is substantially identical with the contract and schedule upheld in *Hart v. Pennsylvania R. Co.* 112 U. S. 331, 28 L. ed. 717, 5 Sup. Ct. Rep. 151, where the transportation was ‘on the condition that the carrier assumes a liability on the stock to the extent of the following agreed valuation: If horses or mules, not exceeding \$200 each. If cattle or cows, not exceeding \$75 each.’

“In the case at bar it has been said that the shipper was not asked to state the value, but only signed the contract handed to him and made no declaration. But the same point made in the *Hart Case*, when the court said:

“‘A distinction is sought to be drawn between a case where a shipper, on requirement, states the value of the property, and a rate of freight is fixed accordingly, and the present case. It is said, that, while in the former case the shipper may be confined to the value he so fixed, in the event of a loss by negligence, the same rule does not apply to a case where the valuation inserted in the contract is not a valuation previously named by the shipper. But we see no sound reason for this distinction. The valuation named was the “agreed valuation,” the one on which the minds of the parties met, however it came to be fixed, and the rate of freight was based on that valuation, and was fixed on condition that such was the valuation, and that the liability should go to that extent and no further.’



"It is said that the contract in the case at bar includes a valuation of all bulls and all cows at the same sum, and that this is arbitrary, and not the result of any real effort to value the particular bulls and cows to be transported. But the same objection applied to the contract in the *Hart Case*, where horses were valued at the same maximum value and other cattle at the same fixed sum. But here, as there, it is plain that all animals, horses and other cattle, have not a fixed value, and so the contract fixes 'a graduated value according to the nature of the animal.'

"It is not unreasonable, for the purpose of graduating freight according to value, to divide the particular subject of transportation into two classes; those above and those below a fixed maximum amount. No other method is practicable; and this is a method administratively approved by the Commerce Commission.

"That the value of the cattle shipped under this valuation did greatly exceed the valuation therein represented may be true. It only serves to show that the shipper obtained a lower rate than he was lawfully entitled to have by a misrepresentation. It is neither just nor equitable that he shall benefit by the lower rate, and then recover for a value which he said did not exist, in order to obtain that rate. Having obtained a rate based upon the declared value, he is concluded, and there is no room for parol evidence to show otherwise. *Hart v. Pennsylvania R. Co.* and *Kansas City Southern R. Co. v. Carl*, *supra*.

"When the carrier graduates its rates by value, and has filed its tariffs showing two rates applicable to a particular commodity or class of articles, based upon a difference in valuation, the shipper must take notice, for the valuation automatically determines which of the rates is the lawful rate. If he knowingly declares an undervaluation for the purpose of obtaining the lower of two published rates, he thereby obtains an advantage and causes a discrimination forbidden and made unlawful by the 1st section of the Elkins Act of February 19, 1903 (32 Stat. at L. 847, chap. 708, U. S. Comp. Stat. Supp. 1911, p. 1309) *Texas & P. R. Co. v. Mugg*, 202 U. S. 242, 50 L. ed. 1011, 26 Sup. Ct. Rep. 628; *Chicago & A. R. Co. v. Kirby*, 225 U. S. 155, 56 L. ed. 1033, 32 Sup. Ct. Rep. 648. The particular cattle were loaded by the shipper and were never seen by the company's agent. Neither was it claimed that he was informed of the value or quality of the cattle to be shipped. We see no ground upon which this contract can be held upon its face to have offended against the statute."

1. *Pierce Co. v. Wells, Fargo & Co.* (1911), 189 Fed. Rep. 561, 110 C. C. A. 645; affirmed *Pierce Co. v. Wells, Fargo & Co.* (1915), 236 U. S. 278, 35 Sup. Ct. Rep. 351, 59 L. Ed. 576.

2. *Ibid*.

3. *Ibid*.

4. *Pierce Co. v. Wells, Fargo & Co.* (1915), 236 U. S. 278, 35 Sup. Ct. Rep. 351, 59 L. Ed. 576, affirming, *Pierce Co. v. Wells, Fargo & Co.* (1911), 189 Fed. Rep. 561, 110 C. C. A. 645.

5. *Pierce Co. v. Wells, Fargo & Co.* *supra*. In *Hart v. Pennsylvania Rd. Co.* (1884), 112 U. S. 331, 5 Sup. Ct. Rep. 151, 28 L. Ed. 717, 720, the United States Supreme Court, per Mr. Justice Blatchford, stated: "It must be presumed, from the terms of the bill of lading, and without any evidence on the subject and especially in the absence of any evidence to the contrary, that, as the rate of freight expressed is stated to be on the condition that the defendant assumes a liability to the extent of the agreed valuation named, the rate of freight is graduated by the valuation. Especially is this so, as the bill of lading is what its heading states it to be, a limited liability live stock contract, and is confined to live stock. Although the horses, being race-horses, may, aside from the bill of lading, have been of greater real value than that specified in it, whatever passed between the parties before the

bill of lading was signed was merged in the valuation it fixed; and it is not asserted that the plaintiff named any value, greater or less, otherwise than as he assented to the value named in the bill of lading, by signing it. The presumption is conclusive that, if the liability had been assumed on a valuation as great as that now alleged, a higher rate of freight would have been charged. The rate of freight is indissolubly bound up with the valuation. If the rate of freight named was the only one offered by the defendant, it was because it was a rate measured by the valuation expressed. If the valuation was fixed at that expressed, when the real value was larger, it was because the rate of freight named was measured by the low valuation. The plaintiff cannot claim a higher valuation, on the agreed rate of freight.

"It is further contended by the plaintiff, that the defendant was forbidden by public policy, to fix a limit for its liability for a loss by negligence, at an amount less than the actual loss by such negligence. As a minor proposition, a distinction is sought to be drawn between a case where a shipper on requirement, states the value of the property and a rate of freight is fixed, accordingly, and the present case. It is said, that, while in the former case the shipper may be confined to the value he so fixed, in the event of a loss by negligence, the same rule does not apply to a case where the valuation inserted in the contract is not a valuation previously named by the shipper. But we see no sound reason for this distinction. The valuation named was the 'agreed valuation', the one on which the minds of the parties met, however, it came to be fixed, and the rate of freight was based on that valuation, and was fixed on condition that such was the valuation and that the liability should go to that extent and no further."

6. *Missouri, K. & T. Ry. Co. v. Harriman Bros.* (1913), 227 U. S. 657, 33 Sup. Ct. Rep. 397, 57 L. Ed. 690, 696, et seq.

2001-C. AT COMMON LAW THE CARRIER AND SHIPPER WERE PERMITTED TO FIX BY MUTUAL AGREEMENT, A BONA FIDE VALUE IN COMPUTING LOSS OF, OR DAMAGE TO A SHIPMENT.

In *Adams Express Co. v. Croninger*<sup>1</sup> the United States Supreme Court, per Mr. Justice Lurton, stated: "The rule of the common law did not limit his liability to loss and damages due to his own negligence, or that of his servants. That rule went beyond this, and he was liable for any loss or damage which resulted from human agency, or any cause not the act of God or the public enemy. But the rigor of this liability might be modified through any fair, reasonable, and just agreement with the shipper which did not include exemption against the negligence of the carrier or his servants. The inherent right to receive a compensation commensurate with the risk involved the right to protect himself from fraud and imposition by reasonable rules and regulations, and the right to agree upon a rate proportionate to the value of the property transported.

"It has therefore become established rule of the common law, as declared by this court in many cases, that such a carrier may, by a fair, open, just, and reasonable agreement, limit the amount recoverable by a shipper in case of loss or damage to an agreed value, made for the purpose of obtaining the lower of two or more rates of 'charges proportionate to the amount of the risk.' *New York Mfg. Co. v. Illinois C. R. Co.* 3 Wall, 107, 18 L. ed. 170; *New York C. R. Co. v. Lockwood*, 17 Wall, 357, 21 L. ed. 627; *Hart v. Pennsylvania R. Co.* 112 U. S. 331, 338, 28 L. ed. 717, 720, 5 Sup. Ct. Rep. 151; *Phoenix Ins. Co. v. Erie & W. Transp. Co.* 117 U. S. 312, 322, 29 L. ed. 873, 878, 6 Sup. Ct., Rep. 1176; *Liverpool & G. W. Steam Co. v. Phoenix Ins. Co. (The Montana)* 129 U. S. 397, 442, 32 L. ed. 788, 792, 9 Sup. Ct. Rep. 469; *New York, L. E. & W. R. Co. v. Estill*, 147 U. S. 591, 619, 37 L. ed. 292, 305, 13 Sup. Ct. Rep. 444; *Primrose v. Western U. Teleg. Co.* 154 U. S. 1, 15, 38 L. ed. 883, 889, 14 Sup. Ct. Rep. 1098; *Chicago, M. & St. P. R. Co. v. Solan*, 169 U. S. 133, 134, 42 L. ed. 688, 690, 18 Sup. Ct. Rep. 289; *Caldron v. Atlas S. S. Co.* 170 U. S. 272, 278, 42 L. ed. 1033, 1035, 18 Sup.



Ct. Rep. 588; *Pennsylvania R. Co. v. Hughes*, 191 U. S. 477, 485, 48 L. ed. 268, 271, 24 Sup. Ct. Rep. 132.

“That such a carrier might fix his charges somewhat in proportion to the value of the property is quite as reasonable and just as a rate measured by the character of the shipment. The principle is that the charge should bear some reasonable relation to the responsibility and that the care to be exercised shall be in some degree, measured by the bulk, weight, character, and value of the property carried.

“Neither is it conformable to plain principles of justice that a shipper may understate the value of his property for the purpose of reducing the rate, and then recover a larger value in case of loss. Nor does a limitation based upon an agreed value for the purpose of adjusting the rate conflict with any sound principle of public policy. The reason for the legality of such agreements is well stated in *Hart v. Pennsylvania R. Co.*, 112 U. S. 331, 338, 28 L. ed. 717, 720, 5 Sup. Ct. 151, where it is said:

“ ‘The limitation as to value has no tendency to exempt from liability for negligence. It does not induce want of care. It exacts from the carrier the measure of care due to the value agreed on. The carrier is bound to respond in that value for negligence. The compensation for carriage is based on that value. The shipper is estopped from saying that the value is greater. The articles have no greater value, for the purposes of the contract of transportation, between the parties to that contract.

“ ‘The carrier must respond for negligence up to that value. It is just and reasonable that such a contract, fairly entered into, and where there is no deceit practised in the shipper, should be upheld. There is no violation of public policy. On the contrary, it would be unjust and unreasonable, and would be repugnant to the soundest principles of fair dealing and of the freedom of contracting, and thus in conflict with public policy, if a shipper should be allowed to reap the benefit of the contract if there is no loss, and to repudiate it in case of loss.’ ”

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1. *Adams Express Co. v. Croninger* (1913), 226 U. S. 491, 33 Sup. Ct. Rep. 148, 57 L. Ed. 314, 321, et seq.

2001-D. A CARRIER MAY NOT, BY A VALUATION AGREEMENT WITH A SHIPPER, LIMIT ITS LIABILITY IN CASE OF THE LOSS OR DAMAGE BY NEGLIGENCE OF AN INTERSTATE SHIPMENT TO LESS THAN THE REAL VALUE THEREOF, UNLESS THE SHIPPER IS GIVEN A CHOICE OF RATES BASED ON VALUATION.

A carrier could, at common law, by fair, open, just, and reasonable agreement, limit the amount recoverable by a shipper in case of loss or damage, to an agreed value, made for the purpose of obtaining the lower of two or more rates, proportionate to the amount of the risk.<sup>1</sup>

In *Union Pacific Rd. Co. v. Burke*<sup>2</sup>, the United States Supreme Court, per Mr. Justice Clarke, stated: “In many cases, from the decision in *Hart v. Pennsylvania R. Co.* 112 U. S. 331, 28 L. ed. 717, 5 Sup. Ct. Rep. 151, decided in 1884, to *Boston & M. R. Co. v. Piper*, 246 U. S. 539, 62 L. ed. 820, 38 Sup. Ct. Rep. 354, Ann. Cas. 1918 E. 469, de-

cided in 1918, it has been declared to be the settled Federal law that if a common carrier gives to a shipper the choice of two rates, the lower of them conditioned upon his agreeing to a stipulated valuation of his property in case of loss, even by the carrier's negligence, if the shipper makes such a choice, understandingly and freely, and names his valuation, he cannot thereafter recover more than the value which he thus places upon his property.

"As a matter of legal distinction, estoppel is made the basis of this ruling,—that, having accepted the benefit of the lower rate, in common honesty the shipper may not repudiate the conditions on which it was obtained,—but the rule and the effect of it are clearly established.

"The petitioner admits all this, but contends that it has never been held by this court that such choice of rates was essential to the validity of valuation agreements, and arguing that they should be sustained unless shown to have been fraudulently or oppressively obtained, it affirms the validity of the agreement in the *Yokohama Bill of Lading*, and cites as a decisive authority *Reid v. Fargo*, 241 U. S. 544, 60 L. ed. 1156, 36 Sup. Ct. Rep. 712.

"With this contention we cannot agree.

"This court has consistently held the law to be that it is against public policy to permit a common carrier to limit its common-law liability by contracting for *exemption* from the consequences of its own negligence or that of its servants (112 U. S. 331, 338 and 246 U. S. 439, 444, *supra*), and valuation agreements have been sustained only on principles of estoppel, and in carefully restricted cases where choice of rates was given,—where 'the rate was tied to the release.' Thus, in the *Hart Case* (p. 343), it is said:

" 'The distinct ground of our decision in the case at bar is, that where a contract of the kind, signed by the shipper is fairly made, agreeing on the valuation of the property carried, with a rate of freight based on the condition that the carrier assumes liability only to the extent of the agreed valuation, even in case of loss or damage by the negligence of the carrier, the contract will be upheld as a proper and lawful mode of securing a due proportion between the amount for which the carrier may be responsible and the freight he receives, and of protecting himself against extravagant and fanciful valuations.'

"And in the *Piper Case* it is said (p. 444):

" 'In the previous decisions of this court upon the subject it has been said that the limited valuation for which a recovery may be had does not permit the carrier to defeat recovery because of losses arising from its own negligence, but serves to fix the amount of recovery upon an agreed valuation made in consideration of the lower rate stipulated to be paid for the service.'

"The *Reid Case*, *supra*, does not conflict with these decisions, for in that case the bill of lading containing the undervaluation, which was there sustained, expressly recited that the freight was adjusted on the basis of the agreed value, and that the carrier's liability should not exceed that sum 'unless a value in excess thereof be specifically declared and stated herein and extra freight as may be agreed upon be paid.' The bill of lading was for ocean carriage only, London to New York, to which, of course, the Interstate Commerce Act was not appli-



cable (June 18, 1910, 36 Stat. at L. 544, Sec. 1, chap. 309, Comp. Stat. Sec. 8563, 4 Fed. Stat. Anno. 2d. ed. P. 337; *Armour Packing Co. v. United States*, 209 U. S. 56, 78, 62 L. ed. 681, 693, 28 Sup. Ct. Rep. 428; *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co.* 13 Inters. Com. Rep. 226), and the carrier, therefore, was in a position to tender to, and, by the quoted provision of the bill, did tender to, the shipper, the choice of paying a higher rate and being subject to less restricted recovery in case of loss. The case was plainly within the scope of the prior decision of this court upon the subject.

"Thus, this valuation rule, where choice is given to and accepted by a shipper, is, in effect, an exception to the common-law rule of liability of common carriers, and the latter rule remains in full effect as to all cases not falling within the scope of such exception. Having but one applicable published rate east of San Francisco the petitioner did not give, and could not lawfully have given, the shipper a choice of rates, and therefore the stipulation of value in the Yokohama Bill of Lading, even if treated as imported into the uniform bill of lading, cannot bring the case within the valuation exception, and the carrier's liability must be determined by the rules of the common law. To allow the contention of the petitioner would permit carriers to contract for partial exemption from the results of their own negligence without giving to shippers any compensating privilege. Obviously such agreements could be made only with the ignorant, the unwary, or with persons deliberately deceived. It results that the judgment of the Supreme Court of the State of New York entered upon the order of the Court of Appeals of that state, must be affirmed."

In *Wells, Fargo & Co. v. Neiman-Marcus Co.*<sup>3</sup> the United States Supreme Court held that the shipper's acceptance of an express company's receipt containing a recital that the company "is not to be held liable beyond the sum of \$50, at not exceeding which sum said property is hereby valued, unless a different value is hereinabove stated," is, where no different value was declared, as much a declaration that the value did not exceed that sum as though so stated upon inquiry, as contemplated by the express company's rules, and is sufficient to justify the application of the doctrine that such a value may, under the "Carmack Amendment" of June 29, 1906, limit its liability for the loss of an interstate shipment to the agreed or declared value.

In *Boston & M. Rd. Co. v. Piper*<sup>4</sup> the United States Supreme Court, per Mr. Justice Day, stated: "In the cases in which the recovery for the lesser valuation has been affirmed, the shipper was offered an opportunity to recover a greater sum than the declared value upon paying a higher rate to the carrier. The shipper was offered alternative recoveries based upon different valuations upon the payment of different rates, and was held bound by the one chosen. Such contracts of shipment this court has held not to be in contravention of the settled principles of the common law preventing a carrier from contracting against liability for losses resulting from its own negligence, and are lawful limitations upon the amount of recovery, binding upon the shipper, upon principles of estoppel. *Hart v. Pennsylvania R. Co.*, 112 U. S. 331, 28 L. ed. 717, 5 Sup. Ct. Rep. 151, followed and approved since the passage of the Carmack Amendment in *Adams Exp Co. v. Croninger*, 226 U. S. *supra*, and see *Wells, F. & Co. v. Neiman-Marcus Co.*, 227 U. S. 469, 57 L. ed. 600, 33 Sup. Ct. Rep. 267; *Kansas City Southern R. Co. v. Carl*,

227 U. S. 639, 57 L. ed. 683, 33 Sup. Ct. Rep. 391; *Chicago, R. I. & P. R. Co. v. Cramer*, 232 U. S. 490, 58 L. ed. 697, 34 Sup. Ct. Rep. 383; *Boston M. R. Co. v. Hooker*, 233 U. S. 97, 58 L. ed. 868, L. R. A. 1915B, 450, 34, Sup. Ct. Rep. 526, Ann. Cas. 1915D, 593; *Atchison, T. & S. F. R. Co. v. Robinson*, 233 U. S. 173, 58 L. ed. 901, 34 Sup. Ct. Rep. 556. Furthermore it has been held that a low valuation will not prevent the application of the rule making the agreement binding upon the shipper. *George N. Pierce Co. v. Wells, F. & Co.*, 236 U. S. 278, 285, 59 L. ed. 576, 582, 35 Sup. Ct. Rep. 351.

"While the rule of the lesser recovery based upon lesser rates, when the shipper has been given the option of higher recovery upon paying a higher rate, has been held binding upon the shipper so long as the published tariff remains in force, this court has not held a bill of lading containing a limitation against liability for loss caused by the carrier's negligence, such as is here involved, to be conclusive of the shipper's right to recover. In the previous decisions of this court upon the subject it has been said that the limited valuation for which a recovery may be had does not permit the carrier to defeat recovery because of losses arising from its own negligence, but serves to fix the amount of recovery upon an agreed valuation made in consideration of the lower rate stipulated to be paid for the service.

"In the bill of lading, now under consideration, there is an express agreement limiting liability from unusual delay and detention, caused by the carrier's negligence, to the amount actually expended by the shipper in the purchase of food and water for his stock while so detained. This stipulation contravenes the principle that the carrier may not exonerate by it, and is not within the principle of limiting liability to an agreed valuation which has been made the basis of a reduced freight rate. Such stipulations as are here involved are not legal limitations upon the amount of recovery, but are in effect attempts to limit the carrier's liability for negligence by a contract which leaves practically no recovery for damages resulting from such negligence. While this provision was in the bill of lading, the form of which was filed with the railroad company's tariffs with the Interstate Commerce Commission, it gains nothing from that fact. The legal conditions and limitations in the carrier's bill of lading duly filed with the Commissioner are binding until changed by that body (*Kansas City Southern R. Co. v. Carl*, 227 U. S. 639, 654, 57, L. ed. 683, 689, 33, Sup. Ct. Rep. 391); but not so of conditions and limitations which are, as is this one, illegal and consequently void.

"We find no error in the judgment of the Supreme Court of Vermont, and the same is affirmed."

A bill of lading for a shipment of raw silk provided that "the amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property, \* \* \* unless a lower value has been represented in writing by the shipper or has been agreed upon \* \* \* in any of which events such lower value shall be the maximum amount to govern such computation." The following clause was stamped on the face of the bill: "Liability limited to one dollar per pound. The consignor of this property has the option of shipping same at a higher rate without limitation as to value in case of loss or damage from causes which would make the carrier liable, but agrees to the specified valuation named in case of loss or damage



\* \* \* because of the lower rate thereby accorded for transportation." The silk was damaged from a cause which rendered the carrier liable. *Held*, That such provisions were consistent and should be construed together; that the specified sum of \$1 per pound was not a limitation of the carrier's liability, but an agreed conventional valuation, which under such provisions was to be taken as the real value of the goods for the purpose of computing the amount of the carrier's liability; and that the measure of such liability was the difference between the damaged value of the goods and their value at \$1 per pound.<sup>5</sup>

1. *Adams Express Co. v. Croninger* (1913), 226 U. S. 491, 33 Sup. Ct. Rep. 148, 57 L. Ed. 314; *Blackwell v. Southern P. Co.* (1910), 184 Fed. Rep. 489; writ of error dismissed, *Blackwell v. Southern P. Co.* (1913), 204 Fed. Rep. 1006.
2. *Union P. Rd. Co. v. Burke* (1921), 65 L. Ed. 318, 319, — U. S. —; — Sup. Ct. Rep. —; affirming, 226 N. Y. 534, 124 N. E. 119, affirming, 178 App. Div. 783, 166 N. Y. Supp. 100.
3. *Wells, Fargo & Co. v. Neiman-Marcus Co.* (1913), 227 U. S. 469, 33 Sup. Ct. Rep. 267, 57 L. Ed. 600.
4. *Boston & M. Rd. Co. v. Piper* (1918), 246 U. S. 439, 38 Sup. Ct. Rep. 354; 62 L. Ed. 820; affirming, *Piper v. Boston & M. Rd. Co.* (Vt. 1916), 97 Atl. 509.
5. *Duplan Silk Co. v. Lehigh V. Rd. Co.* (1915), 223 Fed. Rep. 600.

#### 2001-E. LIMITATION OF LIABILITY FOR LOSS OF GOODS CAUSED BY "THE AUTHORITY OF LAW."

In *Chicago & E. I. Rd. Co. v. Collins Produce Co.*<sup>1</sup> the United States Supreme Court held that a carrier's failure to carry and deliver an interstate shipment is not excused as having been caused by "the authority of law," within the meaning of an exception in the bill of lading, if the carrier by false representation, or by representations which, though not intentionally false, were not known to be true, procured the appropriation of the shipment by military authority, and, but for such confiscation, the shipment or some part of it, in the exercise of ordinary care, could have been transported to destination. Mr. Justice Clarke in rendering the opinion of the court, stated: "The common-law principle making the common carrier an insurer is justified by the purpose to prevent negligence or collusion between dishonest carriers or their servants and thieves or others, to the prejudice of the shipper, who is, of necessity, so remote from his property, when in transit, that proof of such collusion or negligence, when existing would be difficult if not impossible. *Coggs v. Bernard*, 2 Ld. Raym. 909, 92 Eng. Reprint, 107; *Riley v. Horne*, 5 Bing. 217, 130 Eng. Reprint. 1044, 2 Moore & P. 331, 30 Revised Rep. 576. The obligation to transport and to deliver is so exceptional and absolute in character that the relation of the carrier to the shipper was characterized in *New York C. R. Co. v. Lockwood*, 17 Wall. 357, 21 L. Ed. 627, as so partaking of a fiduciary character as to require the utmost fairness and good faith on its part in dealing with the shipper and in the discharge of its duties to him; and so lately as *American Exp. Co. v. Mullins*, 212 U. S. 311, 53 L. ed. 525, 29 Sup. Ct. Rep. 381, 15 Ann. Cas. 536, this court declared that if a carrier, by connivance or fraud, permitted a judgment to be rendered against it for property in its charge, such judgment could not be invoked as a bar to a suit by a shipper.

"These decisions, a few from many, illustrate the character of the relation of trust and confidence which must be sustained between a

common carrier and a shipper. It rests at bottom upon a commercial necessity and public policy which would be largely defeated if the carrier were permitted by false representations, or by representations which, though not intentionally false, were not known to be true, to procure the appropriation by military or other authority of property in its custody, as the jury found was done in this case, and thereby defeat its obligation to carry and deliver.”

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1. *Chicago & E. I. Rd. Co. v. Collins Produce Co.* (1919), 249 U. S. 186, 39 Sup. Ct. Rep. 189, 63 L. Ed. 552; affirming, *Chicago & E. I. Rd. Co. v. Collins Produce Co.* (1916), 235 Fed. Rep. 857, 149 C. C. A. 169, 14 N. C. C. A. 917.

#### 2001-F. BINDING EFFECT OF ACT OF OWNER'S AGENT IN SIGNING CONTRACT OF SHIPMENT CONTAINING LIMITED-LIABILITY PROVISIONS.

Where the owner of live stock authorized another to ship the same, and an employee of such other in his presence signed the shipping contract, it was in legal contemplation signed by the owner, and is binding on him.<sup>1</sup>

An interstate carrier's tariffs, filed with the Interstate Commerce Commission, provided two rates on household goods; the lower being based on a declared value not exceeding a specified amount, with a limitation of liability to that value. Unknown to the carrier, a shipper's agent tendering property for transportation had no authority to declare its value for the purpose of obtaining such lower rate; but he nevertheless signed a household goods release, declaring their value not to exceed the value on which such rate was based. *Held*, That the carrier was justified in relying upon the authority of the agent tendering the shipment to sign such contracts concerning the transportation as were provided for in its published tariffs, and the shipper was bound by such contract.<sup>2</sup>

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1. *Missouri P. Ry. Co. v. Harper Bros.* (1912), 201 Fed. Rep. 671.
  2. *American Brake Shoe & Foundry Co. v. Pere Marquette Rd. Co.* (1915), 223 Fed. Rep. 1018.

#### 2001-G. VALIDITY OF A CONTRACT EXECUTED BY A PERSON SUI JURIS.

In the absence of fraud or mutual mistake, a shipper who is *sui juris* will not be heard to say that he did not read and understand his duly executed contract of shipment.<sup>1</sup>

In *Missouri P. Ry. Co. v. Harper Bros.*<sup>2</sup> Mr. Circuit Judge Baker stated: "Illinois rulings (*Wabash Ry. Co. v. Thomas*, 222 Ill. 337, 78 N. E. 777, 7 L. R. A. [N. S.] 1041) that the carrier must prove, not only that the shipper signed the contract, but additionally that he understood and agreed to its terms, have been limited to intrastate shipments. *Coats v. C. R. I. & P. Ry. Co.*, 239 Ill. 154, 87 N. E. 929. But at all events the Illinois rule would not control interstate transportation. In many businesses, like insurance and carriage, contracts are almost necessarily closed by the applicants' signatures to or acceptances of printed forms, prepared by their adversaries; and transactions would be seriously impeded and might well nigh be brought to a standstill if terms and conditions had first to be discussed and agreed on with each applicant, and then be reduced to writing and signed. Remedies would seem to be best sought in legislative control



of the terms of policies, bills of lading, and the like. But in courts the general rule, applicable here, should be maintained that, in the absence of fraud or mutual mistake, a person *sui juris* will not be heard to say that he had not read and understood his duly executed contract. *Cau v. T. & P. Ry. Co.*, 194 U. S. 427, 24 Sup. Ct. 663, 48 L. Ed. 1053; *Hutchinson on Carriers* (3d Ed.) Sections 408-9."

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1. *Missouri P. Ry. Co. v. Harper Bros.* (1912), 201 Fed. Rep. 671.

2. *Ibid.*

#### 2001-H. LIMITED-LIABILITY PROVISIONS IN BILL OF LADING OF STEAMSHIP COMPANY.

A steamship company, engaged in foreign commerce, may, by a stipulation in its bill of lading, limit its liability to \$100 unless a greater value is declared and such extra freight as may be agreed upon is paid.<sup>1</sup>

Provisions in a bill of lading, limiting liability of the vessel to 20 pounds for each package, unless a higher value is declared and extra freight paid, and that in case of claim for short delivery the price shall be the market value at port of destination, are to be construed together; the former as fixing the maximum of liability, and the latter applying where the claim is for less than the maximum amount.<sup>2</sup>

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1. *Reid v. Fargo* (1916), 241 U. S. 544, 36 Sup. Ct. Rep. 712, 60 L. Ed. 1156.

2. *Stevens v. Cunard S. S. Co., Ltd.* (1920), 265 Fed. Rep. 871.

#### 2002. Evolution of the provisions of section 20 of the Interstate Commerce Act governing the initial carrier's liability and the limitation of carrier's liability.

##### 2002-A. EFFECT OF "CARMACK AMENDMENT," APPROVED JUNE 29, 1906.

"For many years, if not, indeed, from the origin of railroad transportation in this country, common carriers by railroad have sought, by provisions in shipping contracts, bills of lading, tariff publications, etc., to limit their common-law liability, not only as insurers against loss or damage to property received by them for transportation, but also as tort-feasors for loss or damage caused by their negligence. One method was by a so-called release, executed by shipper and carrier, and intended to be effective whether the loss or damage was due to negligence of the carrier or to other causes. The courts in different jurisdictions have differed as to the validity of such limitations, and they have been the subject of legislation in some of the states."<sup>1</sup>

"Congress has enacted several statutes in recent years which affect bills of lading in various respects. Except the 'Harter act,' approved February 13, 1893, which applied only to carriers by water, and to which reference will be made later, the first of these was the Carmack amendment to section 20 of the act to regulate commerce, approved June 29, 1906,<sup>2</sup> the material provisions of which read as follows:

"That any common carrier, railroad, or transportation company receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss,

damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: *Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.'

"Prior to the adoption of this amendment the liability of common carriers was determined by the common law or the statutes of the different states. A usual provision incorporated in bills of lading then in use was one which provided that no carrier should be liable for any loss or damage not occurring on its own line. Under this limitation an initial carrier was not liable at common law for loss or damage through the fault of the connecting carrier to whom it had, in due course, safely delivered the goods for further transportation. Each succeeding carrier was the agent of the shipper for the continuance of the transportation. The shipper, or claimant, in an action for recovery on account of loss or damage, was therefore subjected to the inconvenience of ascertaining upon which one of several lines in the through route the loss or damage occurred. This was often impossible of definite ascertainment, and, therefore, a serious handicap to the shipper in the prosecution of his suit.

"The effect of the Carmack amendment was to hold the initial carrier 'receiving property for transportation from a point in one state to a point in another state' as having contracted for through carriage to the point of destination, using the lines of its connecting carriers as its agents. The amendment took away from such initial carrier its former right to make a contract limiting its liability to loss or damage occurring on its own line, and thus relieved the shipping public of the burden theretofore imposed upon it of proving the particular carrier upon whose line the loss or damage occurred. *Atlantic Coast Line v. Riverside Mills*, 219 U. S., 186. The carrier was prohibited from mitigating or escaping the duties and liabilities imposed upon it by the amendment by any contract, receipt, rule, or regulation which it might make, or attempt to make, with the shipper."<sup>3</sup>

"During the period following the enactment of the so-called 'Carmack Amendment' to the Act to Regulate Commerce in 1906 down to the enactment of the first 'Cummins Amendment' in 1915, several cases came before the Supreme Court of the United States involving questions of interpretation and validity of conditions and provisions in bills of lading, in which the courts sustained the contractual limitations of the carrier's liability.<sup>4</sup> Beginning in 1913, with *Adams Express Co. v. Croninger*, 226 U. S. 491, the Supreme Court of the United States has decided in a number of cases, all of which followed *Hart v. Pennsylvania Rd. Co.*, 112 U. S. 331, that where the shipper has his choice of two rates, the higher carrying unlimited carrier's liability, and in 'a fair, just and reasonable agreement' declares or agrees that the value of his shipment is a certain sum and thereby secures a reduced transportation rate, he is bound by that declaration or agreement, and estopped from claiming or recovering more than that value in case of loss or damage to his property, and conclusively presumed to have known the governing tariff."<sup>5</sup>

"Following the decision in the *Croninger case*, *supra*, there was a distinct change of policy on the part of carriers, generally, in the adjustment of claims made upon them for loss, damage, or injury to property. From a former policy of compromise, of making the best terms possible with the claimant, which was not wholly disadvantageous to



the claimant in many instances, and which, of course, was often discriminatory in its operation, a disposition was developed upon the part of many carriers to stand uncompromisingly upon their rights as defined in the bill of lading.

"Other important decisions of the Supreme Court during this period are *Kansas Southern Ry. v. Carl*, 227 U. S., 639; *Mo., Kans. & Tex. Ry. v. Harriman*, 227 U. S., 657, and *Boston & Maine Rd. v. Hooker*, 233 U. S., 97, in which latter case it was held that regulations of tariffs filed with the Commission containing provisions respecting limitations of the carrier's liability were presumed to be a part of the transportation contract, and, as such, binding upon both carrier and shipper. Perhaps the most extreme application of the doctrine was in the case of *Pierce Co. v. Wells, Fargo & Co.*, 236 U. S., 278, in which the court held that under the law (the interpretation of the Carmack amendment being involved) a shipper of a carload of automobiles in interstate commerce who had deliberately and purposely, and with full knowledge of the limitation, and for the purpose of securing a lower rate, accepted an express receipt limiting recovery to \$50, unless a greater value was declared, could not recover more than the value stated. The effect of this decision was to hold that a limitation of liability in the bill of lading was valid even though the amount stated was purely arbitrary, the court saying, 'The legality of the contract does not depend upon a valuation which shall have a relation to the actual worth of the property.'

"A few days subsequent to the decision in the latter case Congress adopted the so-called first Cummins amendment to the act, which changed the Carmack amendment and imposed liability upon the carrier for 'the full actual loss, damage, or injury to such property' caused by it \* \* \* notwithstanding any limitation of liability or limitation of the amount of recovery,' whatsoever, whether expressed in the bill of lading or otherwise. These amendments had the further effect of withdrawing from the states all regulatory authority and jurisdiction over questions of loss, damage or injury to property shipped in interstate commerce and of bringing such matters under the uniform operation and regulation of federal law."

"Prior to the decision in the *Croninger case*, *supra*, there had been much conflict in the decisions, both of the federal and state courts, upon the question of validity of conditions in bills of lading which limited or sought to limit the amount of the carrier's liability for loss, damage, and injury to goods transported. The proviso in the amendment had been construed by both federal and state courts to preserve to the shipper the remedies then existing under state laws when the latter were more advantageous to him than the remedy provided by federal law, and so the rules were interpreted differently according to the jurisdiction in which the case arose. The *Croninger case* held that it was the purpose of Congress to assume jurisdiction in the fixing of the carrier's liability upon interstate shipments, and thereafter such questions were generally construed in the light of the decision in that case, in which it was held that a contract for transportation containing a stipulation of value to which the carrier's liability was sought to be limited was valid and not in violation of the provision of the act."

However, under the provisions of the second "Cummins Amendment" of August 9, 1916, it is necessary that carriers be authorized or

required by order of the Interstate Commerce Commission to establish and make rates dependent upon the value declared in writing by the shipper, or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released.

1. In Re The Cummins Amendment (1915), 33 I. C. C. Rep. 682, 683.
2. Carmack Amendment, approved June 29, 1906, (34 Stat. L. 595). The joint resolution of Congress approved June 30, 1906, providing that the Hepburn Bill of June 29, 1906, (34 Stat. L. 584, c. 3591), "shall take effect and be in force sixty days after its approval by the President of the United States," was ineffective to prevent such law from going into effect in accordance with its terms on the date of its approval by the President, which was the preceding day. (United States v. Standard Oil Co. (1907), 148 Fed. Rep. 719; Southern P. Co. v. Meadors & Co. (Tex. 1910), 129 S. W. 170, 173).
3. In the Matter of Bills of Lading (1919), 52 I. C. C. Rep. 671, 682, et seq.
4. In the Matter of Bills of Lading, *supra*.
5. In Re The Cummins Amendment, *supra*.
6. In the Matter of Bills of Lading (1919), 52 I. C. C. Rep. 671, 677, et seq.
7. In the Matter of Bills of Lading (1919), 52 I. C. C. Rep. 671, 683.

## 2002-B. PROVISIONS OF THE FIRST "CUMMINS AMENDMENT," APPROVED MARCH 4, 1915.

On March 4, 1915, Congress enacted the first "Cummins Amendment,"<sup>1</sup> so-called, amendatory of Section 20 of the Act to Regulate Commerce, the provisions of which were as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* That so much of section seven of an Act entitled "An Act to amend an Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June twenty-ninth, nineteen hundred and six, as reads as follows, to wit:

"That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or a bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered, or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: *Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law," be, and the same is hereby, amended so as to read as follows, to wit:

"That any common carrier, railroad, or transportation company subject to the provisions of this Act receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever, shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through



bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void: *Provided, however,* That if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce Commission may establish and maintain rates for transportation, dependent upon the value of the property shipped as specifically stated in writing by the shipper. Such rates shall be published as are other rate schedules: *Provided further,* That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: *Provided further,* That it shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days and for the filing of claims for a shorter period than four months, and for the institution of suits than two years: *Provided, however,* That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery."

Sec. 2. That this Act shall take effect and be in force from ninety days after its passage.

"The first Cummins Amendment extended the territorial application of the provisions of the Carmack amendment to the transportation of goods within the territories of the United States, the District of Columbia, or to goods exported to adjacent foreign countries, and also fixed, definitely and rigidly, the liability of the common carrier by a provision making the carrier liable for the full actual loss, damage, or injury caused by it or any of its connections to the goods transported by it, 'notwithstanding any limitations of liability or limitation of the amount of recovery or representation or agreement as to the value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void.' That amendment provided, however, for a bona fide declaration of value, which was binding upon both parties under the following conditions:

"*Provided, however,* That if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce Commission may establish and maintain rates for transportation, dependent upon the value of the property shipped as specifically stated in writing by the shipper. Such rates shall be published as are other rate schedules: *Provided further,* That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law.

"Notwithstanding the evident purpose of that amendment to invalidate all limitations or attempted limitations of liability of carriers for loss, damage, or injury caused by them, there was much diversity of opinion as to its effect upon rates and upon bill of lading provisions which were at the time in force and effect as published in tariffs on file with the Commission. In response to numerous and urgent requests the Commission conducted an inquiry into some phases of the subject and in its report, *The Cummins Amendment*, 33 I. C. C., 682, expressed its views, tentatively, upon some of the matters and things presented.<sup>2</sup> It found that there was necessity for revision of bills of lading, live-stock contracts, and other similar contracts of carriage, as well as of the classifications and rate schedules; that bills of lading and live-stock contracts ought to be at once amended by eliminating obviously unlawful and invalid provisions, and permission was given to make such changes effective upon less than statutory notice. The expression of the Commission's views upon these matters was made with the

express reservation that the questions were subject to judicial interpretation and that its views might be somewhat changed in the light of later developments and more complete information.<sup>73</sup>

1. First Cummins Amendment, approved March 4, 1915, and effective June 2, 1915. (38 Stat. L. 1196).
2. The following is the report of the Interstate Commerce Commission in *In Re The Cummins Amendment* (1915), 33 I. C. C. Rep. 682, et seq.:

"Many widely varying or diametrically opposed ideas have been expressed as to the effect of this amendment and as to what will be the lawful rates under present tariffs when it becomes effective on June 2, 1915. The Commission has been urged to some expression in the premises. It has held a hearing on this subject, and the questions there discussed have been argued on briefs. From the best information it has been possible to obtain and the consideration it has been possible to give this matter within the limited time available, the Commission expresses tentatively the views hereinafter indicated.

"The greater part of the freight transported moves under a bill of lading, which constitutes a receipt for the property and a contract for its carriage. Efforts have been made from time to time to secure the adoption and use by all carriers of a uniform bill of lading, but no such effort has been entirely successful. Several years ago protracted effort of that kind, assisted in so far as seemed appropriate by the Commission, culminated in substantial agreement among the representatives of the shippers and the representatives of the carriers, excepting those in the southern classification territory, as to the terms and conditions of what was then styled and has since been known as the uniform bill of lading. The Commission gave it tentative approval and recommended its use, and since that time it has been in use except in the southern territory mentioned, where a somewhat different bill of lading, commonly called the standard bill of lading, has been and is in use.

"The official classification, which, speaking generally, applies in the territory east of the Mississippi River and north of the Ohio and Potomac rivers, contains a rule that, except as otherwise provided, when property is transported subject to the provisions of that classification the acceptance and use of the uniform bill of lading, export bill of lading, uniform live-stock contract, and certain contracts with men in charge of shipments, respectively, are required. The uniform bill of lading and the other bills of lading or contracts are set out in full in the classification.

"Another rule is that in order that the consignor may have the option of shipping subject to the terms and conditions of the uniform bill of lading, or under the liability imposed upon common carriers by the common law and the federal and state statutes applicable thereto, different rates and different forms of bills of lading are provided, to be used at the election of the shipper. Under this rule, unless it is otherwise provided in the classification, property will be carried at the lower rates specified if shipped subject to all the terms and conditions of the uniform bill of lading. Property carried not subject to all the terms and conditions of the uniform bill of lading is to be carried at the carrier's liability, limited only as provided by common law and by the laws of the United States and of the several states in so far as they apply, but subject to the terms and conditions of the uniform bill of lading in so far as they are not inconsistent with such common carrier's liability, and in such instances a rate of 10 per cent higher, subject to a minimum increase of 1 cent per 100 pounds, will be charged. It is provided that if consignor elects not to accept all the terms and conditions of the uniform bill of lading he shall so notify the agent of the carrier at the time his property is delivered for shipment, and if he does not give such notice it will be understood that he desires the property carried subject to the terms and conditions of the uniform bill of lading in order to secure the lower rate or, as it is termed in the classification, 'the reduced rate.' If the shipper notifies the agent of the initial carrier that he elects not to accept all the terms and conditions of the uniform bill of lading, the agent must print, write, or stamp upon the bill of lading a provision that in consideration of the higher rate charged the property will be carried at the carrier's liability, limited only as provided by law, but subject to the terms and conditions of the uniform bill of lading in so far as they are not inconsistent with such common carrier's liability.

"The western classification, which, speaking generally, applies in all of the territory west of the Mississippi River and Lake Michigan, contains a rule that, except as otherwise provided therein, when property is transported subject to the provisions of the western classification the acceptance and use of the uniform bill of lading is required. It also contains additional provisions substantially like those cited from the official classification. All of the terms of the uniform bill of lading are printed in the classification, but the live-stock contract form does not so appear. The live-stock ratings are stated to be based upon values declared by shippers, not exceeding certain stated values 'under contract.'

"The southern classification, which, speaking in general, applies in the territory east of the Mississippi and south of the Ohio and Potomac rivers, contains a rule that the reduced rates specified in the classification will apply only on property shipped subject to the conditions of the carrier's bill of lading, and that property carried not subject to the conditions of the carrier's bill of lading will be at the carrier's liability, limited only as provided by common law and by the laws of the United States and of the several states in so far as they apply. It provides that property thus carried will be charged 10 per cent higher, subject to a minimum in-



crease of 1 cent per 100 pounds, than if shipped subject to the conditions of the carrier's bill of lading. The classification does not contain the terms of the carrier's bill of lading, and, with one or two individual exceptions, the terms thereof are not filed with the Commission as a tariff publication or rate schedule. The classification provides that the rates on live stock will apply when the declared value does not exceed certain values therein stated and that for each increase of 100 per cent or fraction thereof in the declared value there shall be an increase of 20 per cent in the rate. The classification does not contain any requirement that the live-stock contract must be used, but it does provide that agents must not issue more than one live-stock contract on any one shipment. Some of the tariffs of the individual carriers in this territory contain released rates applicable to shipments of live stock which are conditioned upon certain declared valuations and upon shipments being made under the live-stock contract, and such tariffs provide that higher rates will apply when shipments are not so made. The terms of the live-stock contract are not incorporated in the tariffs and, with one or two individual exceptions, they are not filed with the Commission as a tariff publication.

"It is perfectly plain that the purpose of this law is, except as otherwise provided therein, to invalidate all limitations of carrier's liability for loss, damage, or injury to property transported caused by the initial carrier or by another carrier to which it may be delivered or which may participate in transporting it. The law does not specifically say that attempts so to limit the carrier's liability shall not be resorted to, but it declares them to be invalid and unlawful wherever found and in whatever guise they may appear. Obviously, therefore, neither the bills of lading or other contracts for carriage, or classifications or rate schedules of the carriers, should contain any provisions which are so declared to be unlawful and void.

"Some of the carriers insist that if no changes are made in their classifications and other tariff publications the lower rates, which are conditioned upon the use of the bills of lading now in use, will be automatically canceled and the higher rates, based upon the carrier's liability, will be the only lawful rates from and after the date upon which the law in question becomes effective. Some of the shippers insist that if no changes are made in the classifications or tariff publications, the provisions for limitation of carrier's liability will, when the new law becomes effective, be unlawful and void, and the carriers will thereupon have two sets of rates, both applicable under like conditions, and that of the two the shippers will be entitled to the lower.

"The official classification roads have announced the purpose of making certain changes in the terms of their bill of lading, other contracts of carriage, and classification and rate schedules, in the light of the provisions of the new law. They say that whether or not they will continue to maintain rates based upon the value of the property is a matter for further consideration by their traffic officers. They express the opinion that certain of these changes will impose upon them liabilities not heretofore borne and consequent loss of revenue, and reserve the right to assert at the proper time a claim for some increase in rates on account thereof.

"The southern lines announced their purpose of making certain changes in their contracts, classification and rate schedules which would exempt certain heavy commodities moving in large quantities and said to constitute about 70 per cent of their traffic from any immediate increases in rates on account of the amended law, and to incorporate in the classification a provision that as to the remainder of the traffic the rates contained in schedules governed by the classification would be increased 5 per cent upon the date when the new law becomes effective. That method of changing rates would be in direct opposition to the Commission's regulations governing the construction of tariffs, which are by the act given full force of law. The southern lines urge that the new law will produce conditions which furnish substantial reasons for allowing them additional revenue, and that it is physically impossible, except by the method which they propose, to issue any tariff publications prior to June 2 which will secure that additional revenue. They say that the tariff regulations are prescribed by the Commission and that it is within its power to modify them at any time, and therefore the question of whether or not the carriers should be permitted to make effective the proposed plan is wholly within the Commission's discretion to determine. They argue that if nothing is done the 10 per cent higher rates will automatically become effective, which they do not desire, and that the course proposed by them is the only alternative to the injustice of their being compelled to sustain the burdens imposed by the new legislation without means for recouping the losses which they will suffer.

"The Commission has made no investigation upon which a judgment as to the cost of and proper compensation for additional risk could be based. The Commission has no right to assume that it would be 5 per cent of the rates upon 30 per cent of the carriers' traffic or that it would be any given per cent upon all of the traffic. Obviously there can be no propriety in attaching to one commodity unreasonable rates for the purpose of compensating a carrier for a risk attaching to it in the transportation of another commodity, and it is admitted that the carriers can not make any accurate statement in advance as to the added cost, if any, of the increased liability.

"With regard to rates on shipments of live stock, the southern carriers announced at the hearing their purpose to provide that the present rates would apply on shipments declared to be of value not exceeding that now stated as limitation of the carrier's liability, and to increase the rates 20 per cent for each 100 per cent increase in the declared value of the live stock. By letter submitted since the hearing they announce the purpose to provide for an increase of 5 per cent in the rate for each increase of 100 per cent, or fraction thereof, in the declared value.

"By a still later letter the southern classification roads advise that, in view of the numerous and irreconcilable complications which have developed, and in order to remove all doubt as to the continuance of existing rates after the amendment to the law becomes effective, they have decided to supersede their present classification rule by one which will recite that the rates governed by the classification will apply only on property shipped subject to the conditions of the carrier's bill of lading in use on and after the effective date of the amended law, and, except as otherwise provided in the classification, all interstate rates in effect on June 2, 1915, will continue in force, disregarding provisions in tariffs, classifications, and exception sheets which limit the liability of carriers, and to continue a provision that property carried not subject to the terms and conditions of the carriers' bill of lading will be at carriers' liability, limited only by the common law and the laws of the United States and of the several states in so far as they may apply, and property so carried will be subject to rates 10 per cent higher than those shown in the tariffs.

"The western classification roads, in the main, take a position substantially like that taken by the official classification roads. Their representatives expressed to the committees of Congress the view that the enactment of the amendment in question would, by striking from the uniform bill of lading vital provisions, automatically throw the roads back upon their common-law liability and the increased rates. They admit that a 10 per cent increase in rates can not be justified. They think that the increased liability will justify some increase in rates, but emphatically disclaim any disposition to take advantage of a technical opportunity to mulct the shipping public. They are of opinion that they still have the right to provide rates upon live stock dependent upon the declared value of the stock, and that a shipper who misstates the true value of his shipment is guilty of violation of section 10 of the act, just as he would be if he misstated the commodity shipped. They suggest that their present rule, which provides in general for an increase of 10 per cent in the rate for each 100 per cent of increase in the declared valuation, is probably too high; that an increase of 5 per cent in the rate for each 100 per cent increase in the value, or of 3 per cent in the rate for each increase of 50 per cent in the value, would be a more equitable rule, and that this question is involved in a case soon to be submitted to the Commission. They, like the eastern roads, have numerous commodity rates based upon valuation, and they think they may lawfully continue that practice. They have, however, not had opportunity since this bill was enacted to formulate in detail the changes which they think necessary and proper.

"From the best information that can be gathered from testimony that has been submitted in various cases, it appears that prior to 1913 the limited liability provisions contained in the shipping contracts, classifications, and rate schedules were very generally disregarded in the settlement of loss and damage claims, especially in the western classification territory. It seems, therefore, that to a very large extent at least, despite the limitations of liability stated in the contracts and schedules, full value was quite generally recognized in the settlement of claims. After the Supreme Court decided the case of *Adams Express Co. v. Croninger*, 226 U. S. 491, in 1913, the provisions of the contracts and rate schedules in this and other particulars were recognized as lawfully binding upon carriers and shippers alike, and the policy followed was correspondingly changed. It is pointed out that prior to 1906 many of these limitation of liability were not contained in the shipping contracts and rate schedules; that in 1906 they were incorporated therein, but were largely ignored until 1913; that in 1913 the policy was generally adopted of endeavoring to enforce the limited liability provisions, and that neither in 1906 nor in 1913 was any change in the rates undertaken because of the limited liability. It is argued that inasmuch as no reduction in rates was made when the limited liability provisions were established, or when they were sustained as lawful by the Supreme Court of the United States, there is no justification for an increase in rates now that the liability conditions are restored to substantially what they were prior to 1906. Limitations of liability have been incorporated in live-stock shipment contracts for many years, but, as has been said, it appears that at least in the territory where there is the greatest movement of live stock whose limitations were generally disregarded in settlement of claims.

"The so-called uniform bill of lading, which has been in use in official and western classification territories, contains, and has contained, a provision that claims for loss or damage must be presented to the carrier within four months, but until the *Croninger* case, *supra*, was decided by the Supreme Court no effort was made by the carriers generally to enforce or to observe that provision. After the *Croninger* case was decided the carriers adopted an entirely different course and took the position that this provision was in the bill of lading, the terms of the bill of lading were in the rate schedules, and therefore it was unlawful to depart from that requirement. This created a general controversy, and the sudden change from ignoring a rule to literally enforcing it necessarily created multitudes of unjust discriminations. The question was presented to and considered by the Commission, and as the fair and only means of composing the situation and avoiding endless controversy and litigation, the Commission issued its report, *In the Matter of Bills of Lading*, 29 I. C. C., 417.

"The Cummins amendment makes it unlawful for the carrier to fix a period for giving notice of claims shorter than 90 days, for the filing of claims shorter than four months, and for the institution of suits shorter than two years. The law does not indicate the time or date from which these several periods of time



shall be computed; that is, whether from the date of delivery by the carrier of the damaged property, or in case of loss, after a reasonable time for delivery has elapsed, from the date shown on the bill of lading, or from the occurrence of the loss or of the damage. It seems clear that these provisions are, in common with the other matters governed by the amendment, confined to instances of loss, damage, or injury caused by the carriers. It will be necessary for the carriers to determine what periods of time they will fix for the giving notice of claims, the filing of claims, and the institution of suits. The dates or times from which such periods shall run should also be fixed in the rules. In the interest of thorough understandings and to avoid controversies it is very desirable that these rules be uniform for all the carriers of the country.

"It is to be remembered that the Cummins amendment is not a separate statute, but is an amendment to the act. It must, therefore, be construed as a part of, and in connection with other portions of, the act, and in such a way as to give effect to the whole statute. There does not seem to be any indication of legislative intent to change any provision of the act other than that part known as the Carmack amendment. The new amendment should, if possible, be so construed as to give full force to its clear purpose, without impairing the effect of any other provision of the act.

"The more important points which seem to be surrounded with the most doubt and upon which opinions so far expressed most sharply conflict, are:

"1. If no changes are made in the existing shipping contracts and rate schedules, will the higher rates provided therein automatically become lawfully applicable upon the date upon which the amendment takes effect?

"As we have seen, the Carmack amendment, adopted in 1906, provided that no contract, receipt, rule or regulation should exempt the carrier from the liability thereby imposed. As has been said, no effort was made to change rates because of that amendment to the act. The classifications or rate schedules provide that unless the terms of certain bills of lading are accepted higher rates will apply. The terms of the bill of lading could be modified or changed to any extent without automatically changing any rate. Prior to 1913 many of the limitations contained in bills of lading or other shipping contracts were treated as if they did not exist, and it was never suggested that the validity or invalidity of any such provision affected the rate.

"It is contrary to all canons of construction to hold that an act of Congress produces a result not intended by Congress unless the express language of the act compels such a construction. There is nothing in the expressed terms of this act or in the history of this legislation that shows any intent or purpose on the part of Congress to affect in any degree the existing rates charged by carriers for transporting property. The legislation is aimed at specified contracts and declares them to be unlawful. The lawful rates on file at this time, therefore, are the rates providing for the limited liability. The Cummins amendment, by making contracts limiting liability for loss caused by the carriers unlawful, does not destroy these rates, but they remain in effect and are lawfully applicable, for the 10 per cent increased rates are merely additional and can not stand in and of themselves.

"Applying correct rules of interpretation, the Cummins amendment does not automatically bring into effect the increased rates named in the classifications and tariff publications as applicable to shipments which are not made subject to the terms of the uniform or carrier's bill of lading.

"2. May the carriers lawfully provide in their tariffs and rate schedules that their liability shall be for the full value of the property at the time and place of shipment?

"It is argued that such a provision would be neither a limitation of the amount of recovery nor a representation or agreement as to value within the meaning of the new law. It is urged that this rule would relieve the question of the amount of liability from uncertainty, would afford a reasonable and uniform method of determining the measure of recovery, save endless litigation with its attendant labor and expense, and avoid unjust discriminations.

"The Cummins amendment clearly places upon the carriers liability for the full actual loss, damage, or injury to the property transported which is caused by them and it makes unlawful any limitation of that liability, or of the amount of recovery thereunder, in any receipt, bill of lading, contract, rule, regulation, or tariff filed with this Commission, without respect to the manner or form in which such limitation is sought to be made. The loss or damage must, apparently, be either as of the time and place of shipment, time and place of loss or damage, or time and place of destination. Where rates are lawfully dependent upon declared values, the property and the rates are classified according to the character of the property, of which the value of the property may constitute an element, and such classification is necessarily as of the time and place of shipment. It is therefore believed that the liability of the carrier may be limited to the full value of the property so classified and established as of the time and place of shipment. (*contra*: *Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co.* (1920), 253 U. S. 97, 64 L. 801, 803, 40 Sup. Ct. Rep. 504.)

"3. Does the amendment to the act apply to export and import shipments to and from foreign countries not adjacent to the United States?

"This must be answered in the negative, in view of the fact that, while specifically stating that its terms shall apply to property received for transporta-

tion from certain points to certain other points, it makes no reference to shipments from a point in the United States to a point in a nonadjacent foreign country, or from a nonadjacent foreign country to a point in the United States.

"4. In the proviso, 'that if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods,' what is the proper interpretation to be placed upon the words 'and the carrier is not notified as to the character of the goods'?

"Some argue that the word 'character' means nothing more than a statement of the ordinary name by which the commodity is known. On the other hand, it is urged that knowledge as to what the commodity is is necessary in order to apply to it any transportation rate, and that therefore the word 'character' properly means more than the mere name of the commodity. It has been suggested that the real and proper meaning would be indicated by recasting the language as follows:

*"Provided, however, That if a commodity in the course of transportation is hidden from view by wrapping, boxing, or other means, so that the carrier can not know its character, that is to say, its grade, quality, and condition, it may, with the approval of the Commission, publish and maintain rates based on value and require the shipper to state in writing the value of any shipment made, and beyond the value so stated the carrier shall not be liable.*

"It has also been suggested that in view of the fact that the articles dealt with in this proviso are to be distinguished on the basis of value, the value becomes a peculiar quality of the property and the word 'character' should be construed as including value, and that when the shipper notifies the carrier of the character of the goods the notice is incomplete unless the value is stated as a necessary element in pointing out the character of the goods.

"Another suggestion is that when common experience or knowledge does not clearly establish the nature of the goods, or the view is hidden by boxing, wrapping, or other means, and the carrier is not notified as to the true character of the goods, it may exercise the right to require the shipper to state in writing the value of the property.

"The right of the carrier to initiate its rates and to consider value of the property tendered for transportation as an element in determining the classification thereof or the rate applicable thereto has not been denied by the act or withdrawn by this amendment. The right in certain instances to make varying rates upon a given article or commodity dependent upon its true value being recognized, and it being impossible for the carrier's agent to know the true value of the shipment unless it is declared by the shipper, and in view of the fact that the ordinary name of the commodity is essential to the application of any transportation rate whatsoever, it seems that the word 'character' as used in this proviso must include the true and actual value as stated by the shipper.

"The word 'character' as here used clearly relates primarily to value, or to those qualities affecting value, and when the entire proviso is considered the meaning seems to be that if the qualities affecting value of the goods are hidden from the carrier's view, or are not known to the carrier, the proviso applies. It is a well-settled rule of statutory construction that the word 'and' may be read as 'or' in deference to the meaning of the context.

"If the word 'and' in the proviso is read as 'or,' the meaning is reasonably clear, whereas if the letter of the statute is adhered to the meaning is doubtful and difficult to determine. In those instances in which the carrier desires to limit its liability to the value of the property as specifically stated in writing by the shipper, the rate must be based upon the declared value and be so published; but the Commission apparently must determine in advance of such publication that the commodity is one the value of which can not be known to the carrier from ordinary sources or reasonable inspection, and to which rates based on declared value may be applied in connection with which the carrier's liability is limited to the value so declared.

"In determining that question the inquiry is whether or not the commodity is one the value of which is peculiarly within the knowledge of the shipper. If it has a definite market value, or its value depends upon facts of which the carrier has equal knowledge with the shipper, the 'character' of the shipment is known to the carrier, and the proviso does not apply. The Congress did not affirmatively recognize any rates based upon declared value other than those authorized by this proviso. This, of course, does not mean that commodities may not be reasonably classified according to value and be subject to different rates applicable to different grades of the same commodity, which is a different matter from limiting the liability to the declared value.

"When the goods are not hidden from view, and the carrier is advised as to their character, all contracts or agreements purporting to limit the liability of the carrier for loss or damage caused by it are made void. A carrier, after the Cummins amendment goes into effect, may not contract to limit its liability for loss or damage caused by it to the property. There is, however, no inhibition as to the limitation of the liability of a carrier for losses not caused by it or a succeeding carrier to which the property may be delivered. The amendment has expressly reapplied the limitation of the prior act with respect to loss or damage caused by the carriers chargeable therewith. It follows, therefore, that the interpretation applied to the act before it was amended is equally applicable to the amendment in so far as the latter affects the right of a carrier to establish rates



conditional upon the shipper's assumption of the entire risk of loss attributable to causes beyond the carrier's control. From this it follows that under the amendment a contract or a tariff may lawfully limit to a reasonable maximum the liability of a carrier for losses which it does not cause. It follows further that the rates provided by such tariff may be proportionate to the risk assumed.

"This provision of the statute as to goods concealed from view and of the character of which the carrier is not advised clearly prescribes the right of carriers under the direction or approval of the Commission to provide for a graduation of rates in accordance with the declared value of the property transported. The liability provided by the rates so established by the Commission is applicable no less to instances of loss or damage chargeable to the negligence of the carrier than to those occasioned by causes beyond the carrier's control. But the carriers may not contract to limit their liability for loss, damage, or injury caused by them to property the character of which is manifested by the shipment itself or otherwise disclosed.

"In this connection it has been suggested that the carrier might provide that in the event the shipper refused to declare the value the higher rates would apply. This suggestion can not be approved. If the rate is lawfully conditioned upon the value as declared by the shipper, it is as much the shippers duty to declare the true value of the shipment as it is his duty to declare the name of a commodity tendered for shipment as to which there are no different rates.

"It is important to keep in mind that the carriers are not prohibited from making different rates dependent upon the value of different grades of a given commodity; that, except as covered by the Cummins amendment, including approval of the rates by the Commission, the carrier is subject to all of the liabilities imposed by that amendment; and that if, in any instance, the shipper declares the value to be less than the true value in order to get a lower rate than that to which he would otherwise be entitled, he violates, and is subject to the penalty prescribed in, Section 10 of the act. The carrier would also be subject to the same penalty in such a case if, having knowledge that the value represented is not the true value, it nevertheless accepts the shipper's representation as to value for the purpose of applying the rate.

"5. Do the terms of the Cummins amendment apply to the transportation of baggage?

"This must apparently be answered in the affirmative. Transportation of baggage is a part of the contract for transportation of the passenger. The carriers have always limited their liability for loss of or damage to baggage. The baggage check is the carrier's receipt for the baggage. The conditions attached to the carrier's liability are stated in the fare schedules and on passage tickets of contract form. In *National Baggage Committee v. A. T. & S. F. Ry. Co.*, 32 I. C. C., 152, the Commission considered the carrier's rules relative to charges and liabilities in the transportation of baggage and prescribed certain reasonable regulations, including reasonable insurance charges upon baggage declared to be of greater value than the maximum limit provided in the schedules and contract for carriage. All ordinary personal or sample baggage is hidden from view by boxing, wrapping, or other means, and the amended law seems clearly to recognize the carrier's right to fix conditions and terms applicable to the transportation of baggage dependent upon the value as declared by the person offering the baggage for transportation.

"The necessity for revision of the bills of lading, live-stock contracts, and other similar contracts of carriage, as well as of certain parts of the carriers' classifications and rate schedules, is manifest. Bills of lading and shipping contracts can and ought to be at once amended by eliminating obviously unlawful and invalid provisions. Such action will obviate for the immediate future numerous controversies that otherwise would probably arise. Proper analysis should be made of the classifications and tariffs to bring them into harmony with the amended law.

"Such changes in classifications and rate schedules can not be made upon statutory notice and become effective contemporaneously with the new law. Permission is therefore hereby given to carriers to make effective on June 2, 1915, upon not less than three days' notice to the public and to the Commission, given in the manner prescribed in the act and in the Commission's regulations, amendments to the classifications and rate schedules which eliminate provisions or rules that are in conflict with the terms of the new law, provided no such amendment has the effect of increasing any rate or charge for services.

"If, in a proper manner and a proper proceeding, it shall be made to appear that, with regard to any commodity or commodities, the existing rates do not afford the carriers proper compensation for the services they perform and the risk which is imposed upon them, it could hardly be denied that the rates on such commodities might properly be increased in a sufficient amount to properly compensate the carriers for their added risk and liability. Where rates are lawfully based upon declared values the difference in rates should be no more than fairly and reasonably represents the added insurance. It does not appear that this amendment to the act affords justification for any increase in rates on commodities in general. As has been said, the carrier may not lawfully impose unreasonable rates upon one commodity in order to compensate it for risk or liabilities incurred in connection with the transportation of another commodity, and it is not to be forgotten that the liabilities here considered are only those for loss, damage, or injury to the property caused by a carrier or its agents or employees; in other words, the loss, damage, or injury resulting from the neglects or omissions of a carrier or its agents.

"The Commission has been conducting an investigation with regard to bills of lading, entitled *In the Matter of Bills of Lading*, Docket No. 4844. Further hearings in that proceeding may be necessary in the light of the Cummins amendment. In that connection matters that have been informally presented and urged in this informal proceeding may be presented in a formal way, supported by testimony, and a determination can there be reached on questions as to which the Commission now has no information upon which it could base a lawful order. What is attempted here is simply to indicate the impressions gained from the experience had in the past and from the suggestions informally presented by those who are vitally interested in the effect of the Cummins amendment and the course to be pursued for the immediate future in the light thereof. All of the questions herein discussed are, of course, subject to judicial interpretation, and the views indicated herein might be somewhat changed in the light of more complete information supported by competent evidence.

"The classification, tariffs, receipt and other forms used by the express companies have been prescribed by order of the Commission. The new law, of course, applies to them as well as to other carriers. They have presented suggested changes in their rules and forms which will be disposed of by a supplemental order in the *Express case*.

"HALL, Commissioner, concurring:

"I concur in this report, but do not agree with the construction placed upon the proviso in the Cummins amendment in so far as it extends the exception created by that proviso beyond the meaning of the words used in their usual sense."

A common carrier cannot require a shipper to state the value of an interstate shipment, nor can it rely upon such statement, if made, as a limitation of liability unless the property be hidden from view and the carrier be not informed of the character thereof. *Thompson v. Great N. Ry. Co. (Idaho, 1918)*, 174 Pac. 607. A common carrier receiving goods for interstate transportation is liable for the full actual loss, damage or injury thereof caused by it unless, when the shipment is made, the property is hidden from view and the carrier is not notified as to its character, in which event it may limit the liability to an amount which it may require the shipper to state in writing, as the value of the goods. *Ibid*.

3. In the Matter of Bills of Lading (1919), 52 I. C. C. Rep. 671, 684.

## 2002-C. PROVISIONS OF THE SECOND "CUMMINS AMENDMENT," APPROVED AUGUST 9, 1916.

Effective August 9, 1916, Congress enacted the second "Cummins Amendment,"<sup>1</sup> so-called, further amending Section 20 of the Act to Regulate Commerce, the provisions of which are as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That so much of an Act to amend an Act entitled "An Act to amend an Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved March fourth, nineteen hundred and fifteen, as reads as follows, to wit:

"*Provided, however*, That if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce Commission may establish and maintain rates for transportation, dependent upon the value of the property shipped as specifically stated in writing by the shipper. Such rates shall be published as are other rate schedules," be, and the same is hereby, amended to read as follows, to wit:

"*Provided, however*, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary live stock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section ten of this Act to regulate commerce, as amended: and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term 'ordinary live



stock' shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses."

"By the second Cummins amendment, \* \* \* , effective August 9, 1916, the proviso of the first amendment relating to goods hidden from view by wrapping, boxing, etc., was eliminated and the following language substituted in place thereof:

"That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, \* \* \* to property, except ordinary live stock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section ten of this Act to regulate commerce, as amended; and any tariff schedule which may be filed with the Commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the Commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term 'ordinary live stock' shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses.

"The effect of the latter amendment is to permit limitations of liability, or the amount of recovery, and the establishment and maintenance, under the prescribed conditions, of rates dependent upon values declared in writing by the shipper, or agreed upon in writing as the released value of the property, in respect of all property except 'ordinary live stock,' which, as explained in the amendment, is still subject to the rigorous inhibitions against limitations of the carrier's liability contained in the first Cummins amendment. These conditions, as they affect live stock, will be discussed later in a supplemental report dealing with the live-stock contract or bill of lading.

"With respect to all property other than ordinary live stock, unless the carrier shall have been or shall be expressly authorized or required by the Commission to establish and maintain rates dependent upon a written declaration or agreement as to value, the provisions of the first Cummins amendment are still applicable. That rates dependent upon value may be permitted and that the parties may be free to make declarations or agreements in respect of the value of goods, it is provided that such declarations or agreements shall have no other effect than to limit liability and recovery to an amount not exceeding the value stated and shall not be deemed to be in violation of section 10 of the act."<sup>2</sup>

1. Second Cummins Amendment, approved August 9, 1916, and effective same date. (39 Stat. L. 441.)

2. In the Matter of Bills of Lading (1919), 52 I. C. C. Rep. 671, 684, et seq.

#### 2002-D. PRESENT STATUS OF SECTION 20 OF THE INTERSTATE COMMERCE ACT GOVERNING THE INITIAL CARRIER'S LIABILITY AND THE LIMITATIONS OF CARRIER'S LIABILITY.

Section 20 of the Interstate Commerce Act, (as amended June 29, 1906, March 4, 1915, and August 9, 1916), reads as follows:

(11) That any common carrier, railroad, or transportation company subject to the provisions of this Act receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory,

District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever, shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void: *Provided*, That if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by and under the laws and regulations applicable to transportation by water, and the liability of the initial carrier shall be the same as that of such carrier by water: *Provided, however*, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary live stock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section ten of this Act to Regulate Commerce, as amended; and any tariff schedule which may be filed with the Commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the Commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term "ordinary live stock" shall include all cattle, swine, sheep, goats, horses and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses: *Provided further*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: *Provided further*, That it shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days, for the filing of claims than four months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice; *Provided, however*, That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery.

(12) That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof.

2002-E. "POMERENE BILLS OF LADING ACT," APPROVED AUGUST 29, 1916.

The "Pomerene Act" relating to bills of lading used in interstate and foreign commerce, and especially making order bills negotiable, is fully treated of under "*Bills of Lading and Contracts of Shipment*," Chapter 8, *ante*.

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1. Pomerene Bills of Lading Act, approved August 29, 1916, and effective January 1 1917. (39 Stat. L. 538.)



## 2002-F. "HARTER ACT," APPROVED FEBRUARY 13, 1893.

The so-called "Harter Act," governs the limitation of vessel owners' liability in foreign commerce between ports of the United States and foreign ports. This subject is fully treated of under "*Limitation of vessel owners' liability in foreign commerce.*" Section 2009, *post*.

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1. Harter Act, approved February 13, 1893. (27 Stat. L. 445.)
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## 2003. Status of the common-law liability of the common carrier under Section 20 of the Act.

### 2003-A. PRIOR TO THE ENACTMENT OF THE "CARMACK AMENDMENT" OF JUNE 29, 1906, THE RIGHTS AND LIABILITIES OF SHIPPERS AND CARRIERS WERE GOVERNED BY STATE LAW.

Prior to the "Carmack Amendment" of June 29, 1906, the rights of the parties were governed by State law.<sup>1</sup>

By virtue of the "Carmack Amendment" the subject of interstate transportation of property has been regulated by Federal law to the exclusion of the power of the States to control in such respects by their own policy or regulation.<sup>2</sup>

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1. *Missouri, K. & T. Ry. Co. v. Sealy* (1919), 248 U. S. 363, 39 Sup. Ct. Rep. 97, 63 L. Ed. 296, 300; citing, *Boston & M. Rd. Co. v. Hooker* (1914), 233 U. S. 97, 109, 110, 58 L. Ed. 868, 874, 24 Sup. Ct. Rep. 132; *Chicago, M. & St. P. Ry. Co. v. Solan* (1898), 169 U. S. 133, 42 L. Ed. 688, 18 Sup. Ct. Rep. 289.
  2. *Boston & M. Rd. Co. v. Hooker* (1914), 233 U. S. 97, 58 L. Ed. 868, 875, 34 Sup. Ct. Rep. 526; citing, *Adams Express Co. v. Croninger* (1913), 226 U. S. 491, 57 L. Ed. 314, 33 Sup. Ct. Rep. 148; *Wells, Fargo & Co. v. Neiman-Marcus Co.* (1913), 227 U. S. 469, 57 L. Ed. 600, 33 Sup. Ct. Rep. 267; *Kansas City S. Ry. Co. v. Carl* (1913), 227 U. S. 639, 57 L. Ed. 683, 33 Sup. Ct. Rep. 391; *Missouri, K. & T. Ry. Co. v. Harriman Bros.* (1913), 227 U. S. 657, 57 L. Ed. 690, 33 Sup. Ct. Rep. 397.
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### 2003-B. THE LIABILITY IMPOSED BY THE "CARMACK AMENDMENT" TO SECTION 20 OF THE ACT IS THE LIABILITY IMPOSED BY THE COMMON LAW.

In *Adams Express Co. v. Croninger*<sup>1</sup> the United States Supreme Court held that a liability for some default in its common-law duty as a common carrier, and not liability as an *absolute* insurer, is what is imposed by the "Carmack Amendment" of June 29, 1906, under which a carrier receiving property for interstate transportation is required to issue a receipt or bill of lading therefor, and is made liable to the holder for "any loss, damage, or injury caused by it," or by any connecting carrier to whom the property may be delivered. Mr. Justice Lurton, in delivering the opinion of the court, stated: "What is the liability imposed upon the carrier? It is a liability to any holder of the bill of lading which the primary carrier is required to issue 'for any loss, damage, or injury to such property caused by it,' or by any connecting carrier to whom the goods are delivered. The suggestions that an *absolute* liability exists for every loss, damage, or injury, from any and every cause, would be to make such a carrier an *absolute* insurer, and liable for unavoidable loss or damage, though due to uncontrollable forces. That this was the intent of Congress is not conceivable. To give such emphasis to the words, 'any loss or damage,' would be to ignore the qualifying words, 'caused by it.' The liability thus imposed is limited to 'any loss, injury, or damage caused by it or a succeeding carrier to whom the property may be delivered;' and

plainly implies a liability for some default in its common-law duty as a common carrier."

The court in using the term "absolute insurer" uses the same in counterdistinction to the term "insurer." A common carrier at common law is regarded as an insurer of the goods entrusted to its care and custody for transportation and as such liable for all loss, damage, or injury occurring to the goods while they are held by it in its capacity of a common carrier, except when such loss, damage, or injury is caused by (a) the act of God; (b) the public enemy; (c) the act of the shipper himself; (d) public authority; or (e) the inherent vice or nature of the goods. Therefore, it is clear that at common law a common carrier was not an *absolute* insurer.

The liability for loss or damage under the "Carmack Amendment" aside from the responsibility for the default of a connecting carrier on the route, is not beyond the liability imposed by the common law, as that body of law applicable to carriers has been interpreted by the United States Supreme Court.<sup>2</sup>

In *Kansas City S. Ry. Co. v. Carl*<sup>3</sup> the United States Supreme Court, per Mr. Justice Lurton, stated: "But it is said that upon the face of the contract of limitation here involved, it is an exemption from liability for negligence forbidden by the Carmack amendment, and that the judgment should therefore be affirmed.

"That amendment undoubtedly manifested the purpose of Congress to bring contracts for interstate shipments under one uniform rule or law, and therefore withdraw them from the influence of state regulation. *Adams Exp. Co. v. Croninger*, (226 U. S. 491). Every such initial carrier is required 'to issue a receipt or bill of lading therefor.' When it receives property for transportation from one state to another such initial carrier is made liable to the holder of such receipt for any loss or damage 'caused by it,' or by any connecting carrier in the route to whom it shall make delivery. It is then declared that no contract, receipt, rule or regulation shall 'exempt' such a common carrier 'from the liability hereby imposed.'

"In speaking of the 'liability' imposed by the provision referred to, we said, in the *Croninger Case*, that 'the statutory liability, aside from the responsibility for the default of a connecting carrier in the route, is not beyond the liability imposed by the common law as that body of law applicable to carriers has been interpreted by this court as well as many courts of the states.' Referring to the exemption forbidden by the same clause, we said, that that was 'a statutory declaration that a contract of exemption from liability for negligence is against public policy and void.' Citing *Bernard v. Adams Exp. Co.*, 205 Mass. 254, 259, 28 L. R. A. (N. S.) 293, 91 N. E. 325, 18 Ann. Cas. 351, and *Greenwald v. Barrett*, 199 N. Y. 170, 175, 35 L. R. A. (N. S.) 971, 92 N. E. 218, and other cases."

1. *Adams Express Co. v. Croninger* (1913), 226 U. S. 491, 33 Sup. Ct. Rep. 148, 57 L. Ed. 314. See also, *Galveston, H. & S. A. Ry. Co. v. Wallace* (1912), 223 U. S. 481, 32 Sup. Ct. Rep. 205, 56 L. Ed. 517; *Missouri, K. & T. Ry. Co. v. Harriman Bros.* (1913), 227 U. S. 657, 671, 57 L. Ed. 690, 698, 33 Sup. Ct. Rep. 397; *Cook v. Northern P. Ry. Co.* (N. D. 1915), 155 N. W. 867; *Chicago, R. I. & G. Ry. Co. v. Core* (Tex. 1915), 176 S. W. 778; *St. Louis & S. F. Rd. Co. v. Akard* (Okla. 1916), 159 Pac. 344; *Cudahy Packing Co. v. Atchison, T. & S. F. Ry. Co.* (Mo. 1916), 187 S. W. 149; *Piper v. Boston & M. Rd. Co.* (Vt. 1916), 97 Atl. 509; *De Loach v. Southern Ry. Co.* (S. C. 1916), 90 S. E. 701; *Nabars v. Colorado & S. Ry. Co.* (Tex. 1919), 210 S. W. 276.
2. *Adams Express Co. v. Croninger*, *supra*.
3. *Kansas City S. Ry. Co. v. Carl* (1913), 227 U. S. 639, 33 Sup. Ct. Rep. 391, 57 L. Ed. 683.



2003-C. THE COMMON-LAW LIABILITY OF THE CARRIER AS AN INSURER WAS NOT CHANGED BY THE "CARMACK AMENDMENT."

In *Cincinnati, N. O. & T. P. Ry. Co. v. Rankin*<sup>1</sup> the United States Supreme Court held: "The common-law liability of the carrier as an insurer was not changed with respect to a loss occurring on its own line by the provisions of the Carmack amendment, making the initial carrier of an interstate shipment liable for any loss, damage, or injury caused 'by it' or by any other carrier to which the shipment may be delivered." Mr. Justice McReynolds, in delivering the opinion of the court, stated: "Counsel concede liability of a common carrier under the long-recognized common-law rule not only for negligence, but also as an insurer, and that unless the Carmack amendment has changed this rule, the railway is responsible for damages not exceeding specified value. But they insist that in *Adams Exp. Co. v. Croninger*, 226 U. S. 491, 57 L. Ed. 314, 44 L. R. A. (N. S.) 257, 33 Sup. Ct. Rep. 148, we held this amendment restricts a carrier's liability to loss 'caused by it.' And, consequently, they say, the trial court erred when it charged: 'In this case the carrier is held to the highest degree of care for the safe transportation of the animals.'

"Construing the Carmack amendment, we said through Mr. Justice Lurton in the case cited: 'The liability thus imposed is limited "to any loss, injury, or damage caused by it or a succeeding carrier, to whom the property may be delivered," and plainly implies a liability for some default in its common-law duty as a common carrier.' Properly understood, neither this nor any other of our opinions holds that this amendment has changed the common-law doctrine theretofore approved by us in respect of a carrier's liability for loss occurring on its own line."

In *Lysaght, Ltd. v. Lehigh V. Rd. Co.*<sup>2</sup> Mr. District Judge Learned Hand made the following elucidative statement: "If, then, the common expressions of carrier's liability be accepted, there is no escape here for the defendant, and so it insists that these are only loose and ill-founded formulas, which will not endure historical analysis. The answer is, I think, to be found, not there, but in the definite purposes of the statute which covers the whole subject. There cannot be any doubt, from the latest expression of the Supreme Court (*Cincinnati, etc. Ry. Co. v. Rankin*, 241 U. S. 319, 326, 36 Sup. Ct. 555, 60 L. ed. 1022, L. R. A., 1917A, 265) that section 20 was intended to adopt the carrier's liability as it was understood at that time, and that the language of Mr. Justice Lurton in *Adams Express Co. v. Croninger*, 226 U. S. 491, 506, 507, 33 Sup. Ct. 148, 57 L. ed. 314, 44, L. R. A. (N. S.) 257, is not to be taken as interpreting the phrase 'caused by it' as in limitation of any pre-existing liability. He was indeed discussing, not that question, but only whether the language extended the carrier's liabilities as fixed at common law, which he thought it did not, but that rather it implied 'a liability for some default in its common-law duty as a common carrier.' It may, perhaps, be too much to assert that the proviso of section 20, incorporates unyielding the exact status of the Federal common law into the statute in its whole concreteness, yet it certainly does affirm in general the liability of carriers so derived as a part of the statute itself. Any radical departure from that law would violate the fair import of the phrase, and if there is to be any such it must be by express act of Congress. So much follows from

the scheme of the section, which since 1906 has been obviously molded with an eye to the generally accepted liabilities of carriers as a foundation for the very specific changes prescribed from time to time.

"It is, of course, possible to conceive the common law so incorporated to be such only as the courts might after a historical scrutiny accept, leaving them free even for radical modifications in the doctrine as generally expressed when the language first appeared in section 20. But I do not so understand the substance of the matter. Whether ill or well founded historically, the exceptions to a carrier's absolute liability had come to have a classic form, and I do not agree that a nice inquiry into the foundations of the current doctrine was contemplated by the statute. The section incorporated what was generally accepted in the form in which it had become accepted, and rendered irrelevant the conclusions at which historical scholarship might arrive as to its justification. The structure of the system, created by the act presupposed the existing law as then understood, and if it bears too heavily on the railroads their only relief is by an application to the Commission or to Congress. The courts have no such powers."

The words "caused by it" do not limit the liability of a carrier to that of an ordinary bailee for his own negligence only, but covers any loss or damage for which the carrier would be liable at common law.<sup>3</sup>

See "*The liability imposed by the 'Carmack Amendment' to Section 20 of the Act is the liability imposed by the common law.*" *Section 2003-B, ante.*

1. *Cincinnati, N. O. & T. Ry. Co. v. Rankin* (1916), 241 U. S. 319, 36 Sup. Ct. Rep. 555, 60 L. Ed. 1022.
2. *Lysaght, Ltd. v. Lehigh V. Rd. Co.* (1918), 254 Fed. Rep. 351, affirmed, *Lehigh V. Rd. Co. v. Lysaght, Ltd.* (1921), 271 Fed. Rep. 906.
3. *Lehigh V. Rd. Co. v. Lysaght, Ltd.* (1921), 271 Fed. Rep. 906, affirming, *Lysaght, Ltd. v. Lehigh V. Rd. Co.* (1918), 254 Fed. Rep. 351.

#### 2003-D. THE "CARMACK AMENDMENT" ABROGATES THE COMMON-LAW RIGHT OF THE INITIAL CARRIER TO LIMIT ITS LIABILITY TO ITS OWN LINE.

The "Carmack Amendment" denied to the initial carrier the privilege it formerly had to contract against its liability as agent for connecting carriers, and created an obligation on its part to carry to destination an interstate shipment, though no contract was entered into between the parties, so as to render it liable for loss or damage occasioned by connecting carrier.<sup>1</sup>

In *McGinn v. Oregon-Washington Rd. & Nav. Co.*<sup>2</sup> the Circuit Court of Appeals, per Mr. District Judge Wolverton, stated: "Previous to the Carmack Amendment, the carrier could lawfully contract to carry to destination, even though the transportation were to be over its own and connecting lines. In such event, it constituted the connecting carriers its agents, and thereby rendered itself liable for loss or damage occasioned by and of the connecting carriers, for the obvious reason that the principal is liable for the acts of its agents. The carrier could, however, by contract, lawfully limit its liability to safe carriage over its own line only. In such event, the connecting carriers became the agents of the shipper, and not of the initial carrier. The effect of the Carmack amendment is to deny to the carrier this privilege and to render any such contract a nullity. On the other hand, the amendment creates an obligation on the part of the initial carrier



to carry safely to destination, where the shipment is interstate, even though no contract is entered into between the parties, and renders it liable for loss or damage to the property occasioned by the connecting carriers. Such is, in effect, the holding of the Supreme Court in *Atlantic Coast Line v. Riverside Mills*, 219 U. S. 186, 31 Sup. Ct. 164, 55 L. Ed. 167, 31 L. R. A. (N. S.) 7. This holding has since been re-affirmed. *Missouri, Kans. & Tex. Ry. Co. v. Ward*, 244 U. S. 383, 37 Sup. Ct. 617, 61 L. Ed. 1213; *Texas & P. Ry. Co. v. Leatherwood*, 250 U. S. 478, 39 Sup. Ct. 517, 63 L. Ed. 1096. The last clause of section 20 of the act, as amended, likewise accords to the initial carrier a remedy against the connecting carrier by whose lines the loss or damage is occasioned. This section, also, by preserving to the shipper all remedy and right of action he has under existing law, explicitly sanctions such right and remedy."

State laws or policy nullifying contracts limiting the liability of a carrier for loss or damage to the agreed or declared value upon which the rate was based are superseded, so far as interstate shipments are concerned, by the "Carmack Amendment" of June 29, 1906, which furnishes the exclusive rule on the subject of the liability of a carrier under contracts for interstate shipment.<sup>3</sup>

The exclusive rule on the subject of the liability of a railway carrier under contracts for interstate shipment is furnished by the "Carmack Amendment" of June 29, 1906, under which a carrier receiving property for interstate transportation is made liable for any loss, damage or injury to such property caused by it or any connecting carrier to which the property may be delivered.<sup>4</sup>

1. *McGinn v. Oregon-Washington Rd. & Nav. Co.* (1920), 265 Fed. Rep. 81; writ of certiorari granted, *Oregon-Washington Rd. & Nav. Co. v. McGinn* (1920), 65 L. Ed. 209, 41 Sup. Ct. Rep. 148, — U. S. —.
2. *Ibid.*
3. *Missouri, K. & T. Ry. Co. v. Harriman Bros.* (1913), 227 U. S. 657, 33 Sup. Ct. Rep. 397, 57 L. Ed. 690; *Chicago, R. I. & P. Ry. Co. v. Cramer* (1914), 232 U. S. 490, 34 Sup. Ct. Rep. 383, 58 L. Ed. 697.
4. *Atchison, T. & S. F. Ry. Co. v. Robinson* (1914), 233 U. S. 173, 34 Sup. Ct. Rep. 556, 58 L. Ed. 901.

#### 2003-E. MEANING OF THE PHRASE "ANY REMEDY OR RIGHT OF ACTION WHICH HE HAS UNDER THE EXISTING LAW."

The United States Supreme Court has many times declared the "Carmack Amendment" completely regulates all the liabilities of common carriers engaged in interstate commerce.<sup>1</sup> The Interstate Commerce Act, Section 20, provides that the initial carrier shall be liable for all loss or damage "caused by it" but that section as a whole shall not affect "any remedy or right of action" which the shipper shall have "under the existing law." The phrase "existing law" means existing common law as understood in the Federal Courts, and excludes changes effected by State statutes.<sup>2</sup>

A connecting or terminal carrier's liability is subject to the same rules as the initial carrier.<sup>3</sup>

1. *Adams Express Co. v. Croninger* (1913), 226 U. S. 491, 505, 33 Sup. Ct. Rep. 148, 57 L. Ed. 314; *Lysaght, Ltd. v. Lehigh V. Rd. Co.* (1918), 254 Fed. Rep. 351, affirmed, *Lehigh V. Rd. Co. v. Lysaght, Ltd.*, (1921), 271 Fed. Rep. 906.
2. *Lysaght, Ltd. v. Lehigh V. Rd. Co.*, supra, citing, *Adams Express Co. v. Croninger*, supra; *Southern Express Co. v. Byers* (1916), 240 U. S. 612, 36 Sup. Ct. Rep. 410, 60 L. Ed. 825; *Southern Ry. Co. v. Prescott* (1916), 240 U. S. 632, 36 Sup. Ct. Rep. 469, 60 L. Ed. 836.
3. *Lysaght, Ltd., v. Lehigh V. Rd. Co.* supra, citing, *Georgia, F. & A. Ry. Co. v. Blish Milling Co.*, (1916), 241 U. S. 190, 36 Sup. Ct. Rep. 541, 60 L. Ed. 948.

2003-F. THE CONSTRUCTION OF A LIMITED-LIABILITY PROVISION IN A CONTRACT GOVERNING AN INTERSTATE SHIPMENT PRESENTS A FEDERAL QUESTION.

The liability of a railroad company subject to the Interstate Commerce Act on a contract with an interstate shipper is not governed by State law, but is a Federal question governed by uniform law.<sup>1</sup>

The validity of a contract between a shipper and a carrier, limiting the carrier's liability in case of the loss of an interstate shipment to the declared value of the shipment is a "Federal question," to be determined under the general common law, and is not within the field of State law or regulation.<sup>2</sup>

The concession in counsel's brief in the State Court that a stipulation in an express company's receipt, limiting its liability to an agreed or declared value, made to adjust the rate, was void both under the State law and under the "Carmack Amendment" of June 29, 1906, does not show the lack of any Federal question based upon the validity of such shipping contract which may be received in the Federal Supreme Court, but must, at most, be regarded as a concession for purposes of argument as to a matter of law which could conclude no one, since it did not operate to withdraw the shipping contract from the case, nor its validity from the court's consideration.<sup>3</sup>

A Federal question is not so presented as to sustain a writ of error from the Federal Supreme Court to the highest court of the State where the latter court declined to pass upon the question, because it was not appropriately raised in the Trial Court in the manner required by the State practice, and there does not appear to have been any attempt on the part of the State Court to evade the decision of such question by an unwarranted resort to alleged rules of local practice.<sup>4</sup>

A judgment of a State Court enforcing the liability of two connecting carriers for the loss of an interstate shipment of rice, caused by an extraordinary flood, the waters of which, reaching some cars containing quicklime, started a fire which spread to the rice, is not reviewable in the Federal Supreme Court, although the State Court ruled adversely upon the carriers' contention that, under the combined operation of the "Carmack Amendment" of June 29, 1906, stipulations in the bill of lading, and the common-law rule, they were not liable unless the plaintiff should show that the carrier on whose line the loss occurred negligently failed to take reasonable precautions to avoid it, where the court also found as a matter of fact from the testimony of the carriers' witnesses that such carrier negligently permitted the cars containing rice to remain within the influence of the rising flood and in immediate proximity to the quicklime, when ordinary prudence required their removal to a place of safety.<sup>5</sup>

The question as to the proper construction of a bill of lading for an interstate shipment issued under the "Carmack Amendment" of June 29, 1906, is a Federal one which will sustain the appellate jurisdiction of the Federal Supreme Court over a State Court.<sup>6</sup>

Whether the arrival of an interstate shipment at the destination, the payment of the freight by the consignee, his signature to a receipt for the shipment, and his removal of a part of the goods, leaving the rest, with the carrier's permission, to meet his convenience in removal, discharged the carrier's contract set forth in the bill of lading is



sued pursuant to the Act to Regulate Commerce, and created a new obligation as warehouseman, governed by the local law, which places upon the warehouseman, in case of a loss by fire, the burden of showing that it was not negligent,—is a Federal question which will support the appellate jurisdiction of the Federal Supreme Court of a State Court.<sup>7</sup>

The question whether proper effect was given to the Interstate Commerce Act, and its amendments, in interpreting a stipulation in a bill of lading for an interstate shipment requiring notice of claims for damages to be given to the carrier's officers or station agents as excluding officers or station agents of connecting carriers,—is fairly presented, so as to sustain a writ of error from the Federal Supreme Court to review a judgment of the highest State Court adjudging the stipulation to be no defense to the initial carrier when sued for injuries to the shipment, being unreasonable and inoperative, because no officer or agent primarily employed by the initial carrier was accessible at destination, where a through bill of lading was issued under the Federal legislation, the pleadings show that its application was invoked, and in the answer, as also in the instructions given at the defendant carrier's request, there was a distinct assertion that notice was not given to any officer or station agent of the defendant, or to any officer or station agent of the connecting carrier, which upon the theory that the stipulation, when read in connection with the Federal statutes, contemplated and recognized that notice to an officer or agent of the connecting carrier would suffice.<sup>8</sup>

A holding that the facts which were otherwise pertinent and controlling in a suit against a carrier for delay in the delivery of an interstate shipment, in which the carrier relied upon certain conditions in the interstate bill of lading as a defense, must be put out of view because a bill of lading in the hands of an innocent purchaser is in fact negotiable paper, giving greater rights to him than could be enjoyed by the shipper or by the one from whom he had acquired the bill, amounts to a decision of a Federal question which will sustain a writ of error from the Federal Supreme Court to a State Court.<sup>9</sup>

The contention that the owner of a shipment, or someone shown to be duly authorized to act for him in a way that would render any judgment recovered in the action against the carrier *res judicata* in any other action, is what was meant by the words "lawful holder" in the provisions of the "Carmack Amendment" of June 29, 1906, that any common carrier receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property, is not so frivolous as not to serve as the basis of a writ of error from the Federal Supreme Court to a State Court to review a judgment rejecting such contention.<sup>10</sup>

A right, the creation of a Federal statute, was especially set up or claimed, and decided against, within the meaning of the Judicial Code, Sec. 237, governing writs of error from the Federal Supreme Court to State Courts, where the action was one against the initial carrier of an interstate shipment to recover upon a through bill of lading for the negligence of the connecting carriers, as well as of itself, and was brought since the passage of the "Carmack Amendment" of June 29, 1906, by which Congress took entire possession of the subject

of the rights and liabilities growing out of contracts for interstate shipments, and the defendant carrier, though not specifically mentioning the Federal statute in its answer, did specifically plead a breach of the obligation under the bill of lading to report claims for damages to the terminal carrier in writing within thirty-six hours after the consignee had been notified of the arrival of the freight at the place of delivery, insisting that such obligation had not been complied with, and the State Court, in deciding the case against the carrier, stated that a through bill of lading had been issued and would be controlling in the absence of special facts which it found as to the effect of verbal notice given to certain agents of the terminal carrier.<sup>11</sup>

1. *United Metals Selling Co. v. Pryor* (1917), 243 Fed. Rep. 91, 155 C. C. A. 621; Writ of certiorari denied, *United Metals Selling Co. v. Pryor* (1917), 245 U. S. 662, 62 L. Ed. 536, 38 Sup. Ct. Rep. 61.
2. *American Brake Shoe & Foundry Co. v. Pere Marquette Rd. Co.* (1915), 223 Fed. Rep. 1018, citing, *Adams Express Co. v. Croninger* (1913), 226 U. S. 491, 33 Sup. Ct. Rep. 148, 57 L. Ed. 314; *Michigan C. Rd. Co. v. Vreeland* (1913), 227 U. S. 59, 57 L. Ed. 417, 33 Sup. Ct. Rep. 192.
3. *Wells, Fargo & Co. v. Neiman-Marcus Co.* (1913), 227 U. S. 469, 33 Sup. Ct. Rep. 267, 57 L. Ed. 600.
4. *Louisville & N. Rd. Co. v. Woodford* (1914), 234 U. S. 46, 34 Sup. Ct. Rep. 739, 58 L. Ed. 1202.
5. *New Orleans & N. E. Rd. Co. v. National Rice Milling Co.* (1914), 234 U. S. 80, 34 Sup. Ct. Rep. 726, 58 L. Ed. 1223.
6. *Georgia, F. & A. Ry. Co. v. Blish Milling Co.* (1916), 241 U. S. 190, 36 Sup. Ct. Rep. 541, 60 L. Ed. 948.
7. *Southern Ry. Co. v. Prescott*, (1916), 240 U. S. 632, 36 Sup. Ct. Rep. 469, 60 L. Ed. 836.
8. *Northern P. Ry. Co. v. Wall* (1916), 241 U. S. 87, 36 Sup. Ct. Rep. 493. 60 L. Ed. 905.
9. *Atchison, T. & S. F. Ry. Co. v. Harold* (1916), 241 U. S. 371, 36 Sup. Ct. Rep. 665, 60 L. Ed. 1050.
10. *Pennsylvania Rd. Co. v. Olivit Bros.* (1917), 243 U. S. 574, 37 Sup. Ct. Rep. 468, 61 L. Ed. 908; *Pennsylvania Rd. Co. v. Carr* (1917), 243 U. S. 587, 37 Sup. Ct. Rep. 472, 61 L. Ed. 914.
11. *St. Louis, I. M. & S. Ry. Co. v. Starbird* (1917), 243 U. S. 592, 37 Sup. Ct. Rep. 462, 61 L. Ed. 917.

2003-G. FEDERAL POWER UNDER SECTION 20 OF THE INTERSTATE COMMERCE ACT IS EXCLUSIVE AND SUPERSEDES ALL STATE REGULATION UPON THE SAME SUBJECT, INCLUDING PROVISIONS OF STATE CONSTITUTIONS.

The intent of Congress to take possession of the subject of the liability of a carrier under contracts for interstate shipment, and to supersede all State regulations with reference to that subject, so clearly appears from the "Carmack Amendment" of June 29, 1906, as to invalidate, as applied to interstate shipments, the provisions of any State law nullifying contracts limiting the liability of a carrier for loss or damage to the agreed or declared value.<sup>1</sup>

Congress has so manifested a purpose in the "Carmack Amendment" of June 29, 1906, to take possession of the subject of the liability of a railway carrier for loss or damage to an interstate shipment, as to supersede all State regulations upon the same subject, including the provisions of State Constitutions or laws, invalidating contracts limiting the carrier's liability to an agreed value, made to adjust the rate.<sup>2</sup>

Congress has so far taken over the subject of a carrier's liability for loss or damage to interstate shipments by the Act of June 18, 1910, and the Act of June 29, 1906, as to invalidate the provisions of



S. C. Civ. Code 1912, Sec. 2573, insofar as they may subject a terminal carrier to the prescribed penalty of \$50 for failure to pay promptly a claim for damages to an interstate shipment, no matter where the loss occurred, unless the carrier proves that the shipment never came into its possession, or succeeds, within the forty days allowed, in shifting the loss by giving notice as to when, where, and by which carrier the property was damaged, or by showing that it used due diligence, but was unable to discover where the damage occurred; nor is the statute saved by calling it an exercise of the police power, nor by the proviso in the Act of June 29, 1906, saving the rights of holders of bills of lading under existing law.<sup>3</sup>

Congress has so asserted, by the "Carmack Amendment" of June 29, 1906, its power over the subject of interstate shipments, the duty to issue bills of lading, and the responsibilities thereunder as to preclude the application to an interstate commerce shipment of a local and exceptional rule of law which invests the innocent holder of a bill of lading with rights not available to the shipper, such as the right to reply on erroneous recitals in the bill of lading as to the date of the carrier's receipt of the goods.<sup>4</sup>

The provisions of the "Carmack Amendment" relating to the limitation of liability manifests the purpose of Congress to bring contracts for interstate shipments under one uniform rule of law, and, therefore, withdraws them from the influence of State regulations.<sup>5</sup>

1. *Adams Express Co. v. Croninger* (1913), 226 U. S. 491, 33 Sup. Ct. Rep. 148, 57 L. Ed. 314; *Southern P. Co. v. Crenshaw*, 5 Ga. App. 675, 689, 63 S. E. 865; *Meetze v. Southern Express Co.* (S. C. 1912), 74 S. E. 823, 824; *Central of Ga. Ry. Co. v. Chicago Varnish Co.*, 169 Ala. 287, 290, 53 So. 832; *Jones v. Southern Express Co.* (Miss. 1913), 61 So. 165, 166; *National Rice Milling Co. v. New Orleans & N. E. Rd. Co.* (La. 1912), 61 So. 708, 720; *Missouri, K. & T. Ry. Co. v. Walston* (Okla. 1913), 133 Pac. 42; *Wabash Rd. Co. v. Priddy* (Ind. 1913), 101 N. E. 724, 729; *Farnel v. Florida E. C. Ry. Co.* (Fla. 1913), 61 So. 194, 196; *Hall v. Florida E. C. Ry. Co.* (Fla. 1913), 61 So. 197; *American Silver Mfg. Co. v. Wabash Rd. Co.* (Mo. 1913), 156 S. W. 830, 832; *Joseph v. Chicago, B. & Q. Rd. Co.* (Mo. 1913), 157 S. W. 837, 838; *Southern Ry. Co. v. Bynun* (Ala. 1915), 69 So. 820, 821; *Bowles v. Quincy O. & K. C. Rd. Co.* (Mo. 1916), 187 S. W. 131; *Atchison, T. & S. F. Ry. Co. v. Bement* (Tex. 1916), 189 S. W. 70; *Chicago, R. I. & P. Ry. Co. v. Bruce* (Okla. 1915), 150 Pac. 880; *St. Louis & S. F. Rd. Co. v. Wood* (Okla. 1915), 152 Pac. 848; *Farmers Elevator Co. v. Great N. Ry. Co.* (Minn. 1915), 154 N. W. 954, 957; *Missouri, K. & T. Ry. Co. of Texas v. State* (Tex. 1916), 181 S. W. 721; *Blalock Hardware Co. v. Seaboard A. L. Rd. Co.* (N. C. 1916), 86 S. E. 1025; *Betka v. Houston & T. C. Rd. Co.* (Tex. 1916), 189 S. W. 532; *Aradalou v. New York, N. H. & H. Rd. Co.* (Mass. 1916), 114 N. E. 297; *Washington Horse Exchange v. Louisville & N. Rd. Co.* (N. C. 1916), 87 S. E. 941; *Meyers v. Cleveland, C. C. & St. L. Ry. Co.*, 171 N. Y. Supp. 71; *Nashville, C. & St. L. Ry. Co. v. Kemper* (Ala. 1918), 78 So. 925; *Atlantic C. L. Rd. Co. v. Sandlin* (Fla. 1918), 78 So. 666, 669; *Babbitt v. Grand Trunk W. Ry. Co.* (Ill. 1918), 120 N. E. 803; *Berry v. Chicago & A. Rd. Co.* (Mo. 1919), 208 S. W. 622; *Hadba v. Baltimore & O. Rd. Co.*, 170 N. Y. Supp. 769; *Tribble v. Southern Express Co.* (S. C. 1918), 96 S. E. 712.

Prior to the Carmack Amendment of March 4, 1915, the court in passing upon the validity of contracts based upon released valuation held that where Congress has not seen fit to legislate on a subject involving no Federal question, and the case presenting such Federal question is in the Federal court merely by reason of diversity of citizenship of the parties, the court will determine the question in accordance with the declared policy of the State in which it sits as found either in its statutes or decisions of its highest tribunal. (*Blackwell v. Southern P. Co.* [1910] 184 Fed. Rep. 489, 495; writ of error dismissed, *Blackwell v. Southern P. Co.* [1913,] 204 Fed. Rep. 1006.)

2. *Chicago, B. & Q. Rd. Co. v. Miller Co.* (1913), 226 U. S. 513, 33 Sup. Ct. Rep. 155, 57 L. Ed. 323; *Chicago, St. P. M. & O. Ry. Co. v. Latta* (1913), 226 U. S. 519, 33 Sup. Ct. Rep. 155, 57 L. Ed. 328.
3. *Charleston & W. C. Ry. Co. v. Varnville Furniture Co.* (1915), 237 U. S. 597, 35 Sup. Ct. Rep. 715; 59 L. Ed. 1137.
4. *Atchison, T. & S. F. Ry. Co. v. Harold* (1916), 241 U. S. 371, 36 Sup. Ct. Rep. 661, 60 L. Ed. 1050.
5. *Kansas City S. Ry. Co. v. Carl* (1913), 227 U. S. 639, 33 Sup. Ct. Rep. 391, 57 L. Ed. 683.

2003-II. LIMITED-LIABILITY CONTRACTS TO ADJUST RATES ARE NOT FORBIDDEN BY SECTION 20 OF THE ACT WHEN AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION.

In *Missouri, K. & T. Ry. Co. v. Harriman Bros.*<sup>1</sup> the United States Supreme Court held that the shipper and carrier of an interstate shipment are not forbidden to contract to limit the carrier's liability to an agreed value made to adjust the rate by the provision of the "Carmack Amendment" of June 29, 1906, to Section 20 of the Act, prohibiting exemptions from the liability imposed by that Act.

However, the facts in that case arose prior to the enactment of the "Cummins Amendment" of March 4, 1915, which as amended by the subsequent "Cummins Amendment" of June 9, 1916, makes any such contract or tariff provisions unlawful and void, but authorizes the Interstate Commerce Commission to sanction or require rates dependent upon declared value.

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1. *Missouri, K. & T. Ry. Co. v. Harriman Bros.* (1913), 227 U. S. 657, 33 Sup. Ct. Rep. 397, 57 L. Ed. 690.

2003 -I. MEASURE OF THE RIGHTS AND LIABILITIES OF PARTIES TO AN INTERSTATE SHIPMENT.

The rights and liabilities of the parties to an interstate railway shipment depend upon Federal legislation, the bill of lading, and common-law rules as accepted and applied in the Federal tribunals.<sup>1</sup>

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1. *Cincinnati, N. O. & T. P. Ry. Co. v. Rankin* (1916), 241 U. S. 319, 36 Sup. Ct. Rep. 555, 60 L. Ed. 1022.

2004. Summary of the evolution of the subject of common carriers' liability at common law, as administered in the United States Courts, and as developed by Federal statutes.

The following is a summary of the development of the subject of the "Limitation of Common Carrier's Liability" based upon the common law as administered in the United States Courts, and also as developed by Federal statutes:

*Liability of common carriers under the common law.*

At common law a common carrier is regarded as an insurer of the goods entrusted to its care and custody for transportation and is liable for all loss, damage, or injury occurring to the goods while they are held by it in its capacity of a common carrier, except when such loss, damage, or injury is caused by: (a) The act of God; (b) The public enemy; (c) The act of the shipper himself; (d) Public authority; (e) Or the inherent vice or nature of the goods. Generally a common carrier cannot, under the common law, exempt itself from the consequences of its own negligence or wilful act at any time or under any circumstances in the handling of goods and, therefore, even when the loss is occasioned by or results from one of the excepted perils against which it is not otherwise held as an insurer, it will nevertheless be liable for any failure to use the degree of care that would have prevented or minimized losses resulting from the excepted causes. This liability of common carriers as insurers of the goods they transport is



thus shown to inhere in the peculiar relationship existing between the carrier and the shipper.

This exceptional liability, in addition to that of an ordinary bailee for hire, is imposed by public policy. Therefore, where the loss is not due to the excepted causes, proof of negligence is immaterial, and the carrier cannot escape liability by proving reasonable care and diligence. In the English cases, by which the rule of exceptional liability was first established, it was said that the carrier was an insurer of the goods as against all loss or injury not resulting from the excepted causes, and in a large number of cases in the United States the term "insurer" is used; but nothing more is meant by this expression than that the carrier is absolutely liable, with only the exceptions recognized in the rule as above stated. The general rule as to the carrier's liability is illustrated by cases holding the carrier liable for loss of goods by fire, water, robbery, or other accidental cause, or by negligence or wrong of the carrier's servants or third persons. However, in the fuller development of the rule of carrier's liability it has been held that he is not liable for loss or damage due to the intrinsic qualities of the goods carried, or act or fault of the shipper, and, therefore, the rule might now be more fully stated as being that the common carrier is liable for all losses or injury not due to the act of God or the public enemy, or other *vis major*, the inherent nature or quality of the goods, or act or fault of the shipper or owner, it being understood that as to all of these excepted cases the carrier may be liable by reason of its own negligence or that of its agents, servants, or employees.

See "*Common-law liability of common carriers for loss, damage, or injury to property in interstate and foreign commerce as administered by the United States Courts*," Section 2000, *ante*.

*Limitation and extension of common carriers' common-law liability by contract.*

That a common carrier cannot *exempt* himself from liability for his own negligence or that of his servants is elementary. The rule of the common law did not limit his liability to loss and damage due to his own negligence, or that of his servants. That rule went beyond this, and he was liable for any loss or damage which resulted from human agency, or any cause not the act of God, or the public enemy, but the rigor of this liability might be *modified* through any fair, reasonable, and just agreement with the shipper which did not include *exemption* against the negligence of the carrier or his servants. The inherent right to receive a compensation commensurate with the risk involved the right to protect himself from fraud and imposition by reasonable rules and regulations, and the right to agree upon a rate proportionate to the value of the property transported.

It has, therefore, become an established rule of the common law, as declared by the United States Supreme Court in many cases, that such a carrier may, by a fair, open, just, and reasonable agreement, *limit the amount recoverable* by a shipper in case of loss or damage to an agreed value, made for the purpose of obtaining the lower or two or more rates of charges proportionate to the amount of the risk.

That such a carrier might fix his charges somewhat in proportion to the value of the property is quite as reasonable and just as a rate measured by the character of the shipment. The principle is that the

charge should bear some reasonable relation to the responsibility, and that the care to be exercised shall be in the same degree measured by the bulk, weight, character, and value of the property carried.

Neither is it conformable to plain principles of justice that the shipper may understate the value of his property for the purpose of reducing his rate, and then recover a larger value in case of loss. Nor does a limitation based upon an agreed value for the purpose of adjusting the rate conflict with any sound principles of public policy.

The limitation as to value has no tendency to *exempt* from liability for negligence. It does not induce want of care. It exacts from the carrier the measure of care due to the value agreed upon. The carrier is bound to respond in that value for negligence. The compensation for carriage is based on that value. The shipper is estopped from saying that the value is greater. The articles have no greater value, for the purposes of the contract of transportation, between the parties to that contract. The carrier must respond for negligence up to that value. It is just and reasonable that such a contract, fairly entered into, and where there is no deceit practiced on the shipper, should be upheld. There is no violation of public policy. On the contrary, it would be unjust and unreasonable, and would be repugnant to the soundest principles of fair dealing, and of the freedom of contract, and thus in conflict with public policy, if a shipper should be allowed to reap a benefit of the contract if there is no loss, and to repudiate it in case of loss.

In many cases decided by the United States Supreme Court it has been declared to be the settled Federal law that if a common carrier gives to a shipper the choice of two rates, the lower of them conditioned upon his agreeing to a stipulated valuation of his property in case of loss, *even by the carrier's negligence*, if the shipper makes such a choice, understandingly and freely, and names his valuation, he cannot thereafter recover more than the value which he thus places upon his property.

As a matter of legal distinction, *estoppel* is made the basis of this ruling—that, having accepted the benefit of the lower rate, in common honesty, the shipper may not repudiate the conditions upon which it was obtained—but the real effects of it are clearly established.

The United States Supreme Court has consistently held the law to be that it is against public policy to permit a common carrier to limit its common-law liability by contracting *for exemption* from the consequence of its own *negligence* or that of its servants, and valuation agreements have been sustained only on principles of *estoppel*, and in carefully restricted cases where choice of rates was given—where “the rate was tied to the release.”

Where a contract of the kind, signed by the shipper, is fairly made, agreeing on the valuation of the property carried, with the rate of freight based on condition that the carrier assumes liability only to the extent of the agreed valuation, even in case of loss or damage by the negligence of the carrier, the contract will be upheld as a proper and lawful mode of securing a due proportion between the amount for which the carrier may be responsible and the freight he receives, and of protecting himself against extravagant and fanciful valuation.

The limited valuation for which a recovery may be had does not permit the carrier to *defeat* recovery because of losses arising from



its own negligence, but *serves to fix the amount of recovery* upon an agreed valuation made in consideration of the lower rate stipulated to be paid for the service.

Therefore, at common law, a common carrier could lawfully limit its liability and also limit the amount of recovery where the same was based upon a special rate accorded to the shipper by contract or tariff provisions. However, under a contract containing a *limitation of the amount of recovery* a carrier may not *exempt* itself from liability for negligence.

For many years prior to the enactment of the "Carmack Amendment" of 1906, the carriers maintained a classification of freight whereby the ratings contained therein were conditioned upon the use of the carriers' bill of lading containing certain limited-liability provisions, and where the consignor insisted upon a limited-liability service the rate charged was 10 per cent higher than that stated in the Classification. Although such provisions are still carried in the Consolidated Freight Classification and govern intrastate traffic, in so far as they apply, yet they have no application to interstate commerce since the enactment of the "Carmack Amendment" to the Interstate Commerce Act, as changed by the "Cummins Amendments" of March 4, 1915, and August 9, 1916. For a full treatment of this subject, see "*Validity of limited-liability provisions in classifications and tariffs or rate schedules*," Section 2017, *post*; and "*Limitation of common carrier's liability at common law for loss, damage, or injury to property transported in interstate commerce*," Section 2001, *ante*.

#### *Liability of the initial carrier at common law.*

At common law the initial carrier is the one contracting with the shipper, and not necessarily the one whose line constitutes the first link in the transportation.

It is elementary that at common law a carrier has no right to refuse to receive freight merely because it is destined to a point beyond its own line, it being the duty of the carrier to transport the freight to the end of its line, and there to deliver it to a connecting carrier to be forwarded. Nevertheless, in the absence of some constitutional or statutory provision, a railroad company or other common carrier cannot be required to transport goods to a point beyond its line, and it is not liable for damages resulting from the unloading at the end of its line in the absence of negligence.

The English courts have held that a carrier who receives goods marked to a destination beyond its usual line of transportation so that for the final delivery of the goods at their destination transportation by a connecting carrier will be necessary, the shipper who has actual or presumptive knowledge of the facts is entitled to rely on the acceptance by the first carrier as constituting a contract to deliver the goods at their destination, employing the intermediate carrier as agent for that purpose, that the shipper had a right to assume an undertaking by the carrier, in the absence of any express agreement to the contract; to deliver the goods at their ultimate destination, and according to what is called the English rule, the carrier receiving the goods becomes liable as carrier for the entire transportation.

The Canadian courts have adopted the English rule. In most of the State courts and in the United States courts, the English doctrine has been repudiated. The rule formulated by the decision of these courts is that, in the absence of any contract or statute to the contrary, or any partnership agreement between connecting carriers or joint contract for the transportation, the liability of the initial carrier, notwithstanding the fact that the goods are marked to a point beyond its line, terminates when it transports the goods to the end of its line and delivers them to a connecting carrier to be transported to their destination.

Although by the great weight of authority the common-law liability of a carrier for injury to, or loss of, goods is restricted to its own line, in the absence of contract or statute extending its liability, a carrier may make a valid contract to transport property beyond its own line, and when it does it is bound to deliver the property at its place of destination according to the contract, and is liable for loss of or injury to the goods occurring after the property has passed over its line and while in the custody of other carriers. Under these circumstances, a connecting carrier, receiving goods for the purpose of transporting them to their destination and delivering them there, becomes the agent of the carrier receiving the goods from the consignor for shipment for the purposes of through transportation and delivery. Such contracts are not *ultra vires*, although it was at one time open to debate whether such was the case; and such contracts are valid, although the agreement is to transport the goods beyond the limits of the State in which the carrier is chartered.

The contract may be either express or implied, absolute or conditional. However, a contract whereby the liability of the carrier is sought to be extended beyond its own line may not be inferred from loose and doubtful expressions; the proof of such undertaking must be clear and explicit. And it may be stated generally that the facts and circumstances of the particular case must control as to whether there is or is not a through contract of shipment.

See "*Common-law liability of the initial carrier for the through transportation.*" Section 2000-J, *ante*.

*Liability of the initial carrier for the through transportation as fixed by the "Carmack Amendment" to Section 20 of the Interstate Commerce Act, of June 29, 1906.*

The common-law rule that the carrier cannot be required to transport goods to a point beyond its own line has been entirely abrogated by the "Carmack Amendment" to Section 20 of the Interstate Commerce Act so far as shipments subject to that Act are concerned.

The "Carmack Amendment" to the "Hepburn Act" of June 29, 1906, which amended Section 20 of the Act to Regulate Commerce, provided as follows:

That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; *Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law.



As subsequently amended by the first "Cummins Amendment" of March 4, 1915, Section 20 (11) of the Interstate Commerce Act reads as follows:

That any common carrier, railroad, or transportation company subject to the provisions of this Act receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever, shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; \* \* \* *Provided, further,* That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law.

By virtue of the "Carmack Amendment" any common carrier, railroad, or transportation company receiving property for transportation as stated therein, must issue a receipt or bill of lading for such property and is treated as the initial carrier for purposes of liability. So that, a common carrier who receives goods for interstate shipment is the "initial carrier," although it only switches the car in which the goods are loaded to the line of some other common carrier to be transported by it out of the State. It being the carrier receiving the property for interstate transportation, the law imposes an obligation on it to issue a receipt or bill of lading for such property.

The "Carmack Amendment" created only one new liability—that of the initial carrier for loss or damage caused by a connecting carrier. It did not create or alter the liability of the initial carrier for loss or damage in its own line.

The clause in the "Carmack Amendment" making the initial carrier liable for loss or damage to goods on its own line or the line of connecting carriers, is declaratory of the common law; the clause forbidding it by receipt, contract, rule or regulation to exempt itself from the liability imposed is in derogation of the common law. This amendment imposes the ordinary common-law liability, and denies the common-law right to contract for special exemptions therefrom, and the word "caused" implies not only the active misconduct and deeds of commission, but also passive neglect, deeds of omission and failure to exercise duties faithfully.

A liability for some default in its common-law duty as a common carrier and not *liability as an insurer*, is what is imposed by the "Carmack Amendment," making the initial carrier liable to the holder of the bill of lading for "any loss, damage, or injury to such property *caused* by it" or by any connecting carrier to whom the property may be delivered. The effect of the "Carmack Amendment" is to hold the initial carrier engaged in interstate commerce and "receiving property for transportation from a point in one State or Territory or District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country" as having contracted for the through carriage to the point of destination, using the lines of the connecting carriers as its agents.

See "*Statutory liability of the initial carrier for loss, damage, or injury to property transported in interstate commerce and to adjacent foreign countries.*" Section 2005, *post*.

*Liability of initial carrier for loss, damage, or injury to property while same is in custody of a water carrier.*

The second "Cummins Amendment" of August 9, 1916, contains a proviso providing that if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by and under the laws and regulations applicable to transportation by water, and the liability of the initial carrier shall be the same as that of such carrier by water.

See "*Liability of initial carrier for loss, damage or injury to property while the same is in the custody of a water carrier*," Section 2005-I, *post*.

*Liability of initial carrier for full actual loss, damage, or injury to property transported in interstate and foreign commerce, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value.*

The original "Cummins Amendment" of March 4, 1915, laid upon the carriers liability in full for any loss, damage, or injury caused by them to the property transported, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any receipt, bill of lading, or in any contract, rule, regulation, or tariff, and any such limitation, without respect to the manner or form in which it is sought to be made, was declared to be unlawful and void. It was further provided that in instances where goods were hidden from view by wrapping or other means, the carrier might require the shipper to state specifically in writing the value of the goods and should not be liable beyond the amount so specifically stated.

The proviso of the first "Cummins Amendment" relating to goods hidden from view by wrapping, boxing, etc., was eliminated and the proviso was amended so as to provide that the provisions respecting liability for full actual loss, damage, or injury, and declaring any limitation thereof to be unlawful and void shall not apply to baggage or to property, except ordinary live stock, on which the carrier has been or shall thereafter be authorized or required by order of the Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as to the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released and shall not, so far as relates to values, be held to be a violation of Section 10 of the Act.

The effect of the latter amendment is to permit limitations of liability, or the amount of recovery, and the establishment and maintenance, under prescribed conditions, of rates dependent upon values declared in writing by the shipper, or agreed upon in writing, as the released value of the property. In respect to baggage and all property except "ordinary live stock" which, as explained in the amendment, is still subject to the rigorous inhibitions against limitations of the carrier's liability contained in the first "Cummins Amendment." The Act defines "ordinary live stock" to include all cattle, swine, sheep, goats, horses and mules, except such as are chiefly valuable for breeding, raising, show purposes, or other special uses.



With respect to all property other than ordinary live stock, unless the carrier shall have been or shall be expressly authorized or required by the Interstate Commerce Commission to establish and maintain rates dependent upon a written declaration or agreement as to value, the provisions of the first "Cummins Amendment" are still applicable. The rates dependent upon value may be permitted and the parties may be free to make declarations or agreements in respect to the value of the goods. However, it is provided that such declarations or agreements shall have no other effect than to limit liability and recovery to an amount not exceeding the value stated and shall not be deemed as violating Section 10 of the Act which provides certain penalties and forfeitures for violation thereof.

The plain and unmistakable purpose of the "Cummins Amendment" was to make unlawful and void, except as otherwise provided therein, all attempted limitations of liabilities for loss, damage, or injury to the property transported. The law does not specifically say that attempts to so limit carrier's liability shall not be resorted to, but declares them to be invalid and unlawful wherever found and in whatever guise they may appear. Obviously, therefore, neither the bills of lading or other contracts for carriage or classifications or rate schedules of the carrier shall contain any provisions which are so declared to be unlawful and void.

The Act, as amended, fixes upon the carrier liability for the full actual loss, damage, or injury caused by it to ordinary live stock and invalidates any limitation or attempted limitation of that liability, wherever or in whatever form it is found. Ordinary live stock is excepted from property as to which the Commission is empowered to authorize or require the establishment of rates dependent upon declared or released value. The Commission cannot, in view of the provisions of the law, authorize or sanction such rates upon ordinary live stock; neither can such rates be lawfully maintained upon any other character of traffic except under authorization duly granted by the Commission. Under such authority both shipper and carrier are fully protected and the spirit of the law is observed.

A liability for some default in its common-law duty as a common carrier and not *liability as an insurer*, is what is imposed by the "Carmack Amendment" making the initial carrier liable to the holder of the bill of lading for "any loss, damage or injury to such property caused by it."

See "*Limited-liability provisions of Section 20 of the Act governing the transportation of live stock,*" Section 2006, post; "*Limited-liability provisions of Section 20 of the Act not applicable to the carriage of baggage,*" Section 2007, post; "*Limitation of the common carrier's liability in the transportation of perishable traffic,*" Section 2008, post; "*Rates dependent upon a declared or released valuation, as authorized or required by the Interstate Commerce Commission,*" Section 2013, post; "*Liability of the initial carrier for the full actual loss, damage, or injury to the property transported, notwithstanding any limitation of liability, or limitation of the amount of recovery, or representation or agreement as to value,*" Section 2014, post; "*Validity of limited-liability provisions in receipts, bills of lading and contracts of shipment,*" Section 2016, post; "*Validity of limited-liability provisions in classifications and tariffs or rate schedules,*" Section 2017, post.

*Time for filing claims and instituting suits.*

Section 20 of the Act, as amended by the first "Cummins Amendment," provided that it shall be unlawful for any common carrier to provide by rule, contract, regulation, or otherwise, a shorter period for giving notice of claims than 90 days, for the filing of claims than four months, and for the institution of suits than two years, such period for the institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. No notice of claim nor filing of claim is required as a condition precedent to recovery if the loss, damage, or injury complained of was due to delay or damage while the goods were being loaded or unloaded, or damaged in transit by the carelessness or negligence of the carrier.

See "*Time for giving notice of and filing of claims with carriers, and for institution of suits for recovery of damages under Section 20 of the Act,*" Section 2019, *post*.

*Extent of the interstate and foreign commerce subject to the provisions of Section 20 of the Act.*

The provisions of the "Carmack Amendment" were limited to transportation from a point in one State to a point in another State. The first "Cummins Amendment" extended the territorial application of the provisions of the "Carmack Amendment" to the transportation of goods within the territories of the United States, the District of Columbia, and to goods exported to adjacent foreign countries.

See "*Limited-liability provisions of Section 20 applicable to property received for transportation from any point in the United States to a point in an adjacent foreign country,*" Section 2005-N, *post*; and "*The liability provisions of Section 20 of the Act do not apply to commerce between the United States and nonadjacent foreign countries,*" Section 2005-O, *post*.

The statute was not made to apply to property imported into the United States and from an adjacent foreign country for the obvious reason that Congress does not possess any extra-territorial jurisdiction. As to such traffic the case would be governed by the rules of the common law.

The liability provisions of Section 20 do not apply to commerce between the United States and nonadjacent foreign countries, and this is true whether the inland movement is through two or more states or confined wholly within one State. Commerce to nonadjacent foreign countries as far as the inland rail movement is concerned is governed by the rules of the common law and the ocean transportation is governed by the Act of Congress of February 13, 1893, known as the "Harter Act," which governs the limitation of vessel owner's liability in foreign commerce between ports in the United States and foreign ports.

See "*Limitation of vessel owner's liability in foreign commerce,*" Section 2009 *post*; "*The liability provisions of Section 20 of the Act do not apply to commerce between the United States and nonadjacent foreign countries,*" Section 2005-O, *post*; and "*Statute not applicable to foreign commerce to countries not adjacent where the inland rail movement is wholly within one State,*" Section 2005-P, *post*.



**2005. Statutory liability of the initial carrier for loss, damage, or injury to property transported in interstate commerce and to adjacent foreign countries.**

**2005-A. DUTY OF INITIAL CARRIER TO ISSUE A RECEIPT OR BILL OF LADING COVERING A SHIPMENT IN INTERSTATE COMMERCE OR COMMERCE TO ADJACENT FOREIGN COUNTRIES.**

Section 20 (11) of the Interstate Commerce Act (*as amended March 4, 1915*) reads as follows:<sup>1</sup>

That any common carrier, railroad, or transportation company subject to the provisions of this Act, receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country, shall issue a receipt or bill of lading therefor, \* \* \* .

The "Carmack Amendment," which requires a written shipping contract for interstate traffic, and prescribing uniform rules for the liability of carriers growing out of such contract supersedes all other regulations applying to such traffic.<sup>2</sup>

The "Carmack Amendment" making the initial carrier liable for the negligence of connecting carriers and requiring the issuance of a bill of lading, does not prevent the initial carrier from becoming liable for such negligence where, though no bill of lading was issued, a through shipment was undertaken.<sup>3</sup>

Plaintiff shipper's clerk, after goods were loaded into defendant C. M. & St. P. Ry.'s car, delivered it at Milwaukee to the receiving clerk of the C. M. & St. P. Ry., with directions to ship the car to Harvard, Ill., and the receiving clerk put a routing tag on the car in accordance with this direction. The shipping clerk also presented to the receiving clerk the shipping book consisting of blank bills of lading, in which there were two bills of lading, identical in terms, filled out with the name of the consignee, the destination of the goods, etc., and containing the words "Via N. W. line." The receiving clerk stamped the receipt of the C. M. & St. P. Ry. on one of the bills. After doing this he saw the letters "C. & N. W." penciled at the top and then wrote "Void" in ink over the receipt stamp and handed the book back to the shipping clerk. There was no evidence the shipping clerk knew of this attempted obliteration of the receipt. *HELD*, defendant C. M. & St. P. Ry. was liable under the "Carmack Amendment" for damage to the goods while in transit, as the transaction constituted a complete contract of interstate transportation.<sup>4</sup>

A "shipping order contract and bill of lading," stating the number and describing the horses shipped, the name of the consignee and the destination in another State, and containing stipulations governing the entire transportation from the initial point in one State to the destination in another State, and undertaking to specify the rights, duties and limitations of the parties and also of those of subsequent carriers is a "receipt or bill of lading" within the meaning of the "Carmack Amendment," which requires the issuance of such a receipt for an interstate shipment and makes the initial carrier liable for loss or damage caused by connecting carriers.<sup>5</sup>

1. The Carmack Amendment of June 29, 1906, was confined to the transportation of property from a point in one State to a point in another State. The present provisions of Section 20 of the Act requiring the initial carrier to issue a receipt or

bill of lading covering property received for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, or District of Columbia, or from any point in the United States to a point in an adjacent foreign country, were added by the first Cummins Amendment of March 4, 1915.

2. *Kent v. Chicago, B. & Q. Rd. Co.* (Mo. 1915), 176 S. W. 1105.
3. *Keithley v. Lusk* (Mo. 1915), 177 S. W. 756.
4. *Aton Piano Co. v. Chicago, M. & St. P. Ry. Co.* (Wis. 1913), 139 N. W. 743, 745.
5. *Southern P. Co. v. Meadors & Co.* (Tex. 1910), 129 S. W. 170, 172.

2005-B. INITIAL CARRIER IS LIABLE TO THE HOLDER OF THE BILL OF LADING FOR ANY LOSS, DAMAGE, OR INJURY TO THE GOODS, REGARDLESS ON WHAT PORTION OF THE ROUTE THE SAME OCCURRED.

Section 20 (11) of the Interstate Commerce Act, (*as amended June 29, 1906, and March 4, 1915*), provides as follows:

That any common carrier, railroad, or transportation company subject to the provisions of this Act receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may pass within the United States or within an adjacent foreign country when transportation on a through bill of lading, \* \* \*.

The "Carmack Amendment," making the initial carrier liable for loss, damage, or injury caused on its own or the line of a connecting carrier, imposes the ordinary common-law liability and denies the common-law right to contract for special exemptions therefrom, and the word "caused" implies not only active misconduct and deeds of commission, but also passive neglect, deeds of omission and failures to exercise duties faithfully.<sup>1</sup>

The "Carmack Amendment" created only one new liability—that of the initial carrier for loss or damage caused by the connecting carrier. It did not create or alter the liability of the initial carrier for loss or damage on its own line.<sup>2</sup>

The clause in the "Carmack Amendment" to the "Hepburn Act," making the initial carrier liable for loss or damage to goods on its own line or the line of connecting carriers, is declaratory of the common law; the clause forbidding it by receipt, contract, rule or regulation to exempt itself from the liability imposed is in derogation of the common law.<sup>3</sup> The effect of the "Carmack Amendment" as to interstate shipments is to make the connecting carriers the agents of the initial carrier, the same as if the initial carrier had contracted for the through carriage from point of origin to point of destination.<sup>4</sup>

Under the "Carmack Amendment" the initial carrier is liable for damage to an interstate shipment caused by the negligence of the connecting carrier, notwithstanding a clause in the bill of lading limiting its liability to loss or damage occurring on its own line.<sup>5</sup>

Under the "Carmack Amendment," making the initial carrier liable for loss or damage caused by the connecting carrier, the initial carrier's liability is the same whether by its shipping contract it states that it undertakes to transport to destination or only to the end of its line, where the contract provides for and contemplates delivery to the connecting carrier and the carrying of the goods to the destination on the line of the connecting carrier.<sup>6</sup>



Under the "Carmack Amendment," making the initial carrier liable for loss or damage caused by itself or connecting carriers and forbidding exemption from such liability, a stipulation in a bill of lading of an interstate shipment for exemption from liability for loss or damage to the goods occasioned by fire, is without effect, if the fire is due to the negligence of any carrier handling the goods.<sup>7</sup>

Whatever presumption may have existed prior to the enactment of the "Carmack Amendment" of 1906, that damages occurred on the line of the final carrier, can have no place in construing the liability of the carrier, on whose line the damages occurred, to the initial carrier, because the right of the initial carrier to recover against a connecting carrier is made to rest alone on proof that the damages occurred on that line. Presumptions indulged in by courts, prior to the enactment of the amendment, in regard to the final carrier, have no bearing or effect upon cases arising under the amendment. These presumptions have been effectually destroyed by the declaration that the initial carrier in interstate shipments is liable, no matter on what line the damages occurred.<sup>8</sup>

Under the provisions of the Interstate Commerce Act, (*as amended June 29, 1906*), a carrier who receives property for transportation from a point in one State to a point in another State is made liable for any loss, damage, or injury to such property caused by a connecting carrier, and cannot restrict its liability to its own line.<sup>9</sup>

Under the "Carmack Amendment," the initial carrier of an interstate shipment is liable for damages for *delay* occurring through the fault of a connecting carrier.<sup>10</sup>

A common carrier, who, as principal, receives goods for interstate shipment and issues a bill of lading therefor is the "initial carrier," although it only switches the car in which the goods are loaded to the line of another common carrier, to be transported by it out of the State.<sup>11</sup>

A switching carrier may handle a shipment of goods as the agent for the carrier issuing the bill of lading and the latter carrier is treated as the initial carrier although it was not actually the first carrier that handled the shipment.<sup>12</sup>

By the "Carmack Amendment," Congress has relieved carriers of interstate shipments from the liability of *insurers*, as it was at common law, and the liability imposed on such carriers by that statute is limited to any loss, damage, or injury to the property *caused by it*, or by a succeeding carrier to whom the property may be delivered, and plainly implies some *default* in it, some negligence on the part of the initial carrier, or some connecting line over which the property is transported.<sup>13</sup>

The amendment does not use the term "initial carrier," nor "primary carrier," but the words employed refer to the initial carrier by designating such carrier as the one *receiving* property for an interstate shipment. The carrier made liable by the amendment has been treated by the courts continually as the initial or first carrier receiving the goods, and the purpose of the amendment has been declared to be, to combine unity of responsibility with continuity of transportation.<sup>14</sup> Where a carrier on being notified of the refusal of the original consignee to pay for the goods informed the consignor; after investigation,

that it located the goods and indorsed on the original bill of lading a statement that they were reconsigned to another, a new contract of shipment was entered into which was binding on the carrier, even though not consented to by the original consignee, and the carrier was liable to the second consignee for failure to deliver the goods. Such a carrier was an initial carrier within the "Carmack Amendment," even though before the reconsignment the goods had been delivered to another carrier since the shipment originated on its line, and the only contract of carriage was made by it.<sup>15</sup>

Under the "Carmack Amendment," a railroad receiving potatoes from a steamboat company to which the shipper had delivered them, and furnished the car in which they were loaded for interstate shipment, and negligently failing to prepare it for such shipment, so that the potatoes were damaged was liable.<sup>16</sup>

1. Louisville & N. Rd. Co. v. Warfield, 6 Ga. App. 550, 65 S. E. 308.
2. McElvain v. St. Louis & S. F. Rd. Co. (1910), 151 Mo. App. 126, 153, 131 S. W. 736.
3. Southern P. Co. v. Crenshaw, 5 Ga. App. 675, 685, 65 S. E. 865.
4. Earnest v. Delaware, L. & W. Rd. Co. (N. Y. 1912), 134 N. Y. Supp. 232, 235; Florman v. Dodd & Childs Express Co., 79 N. J. L. 63, 74 Atl. 446; Kemendo v. Fruit Dispatch Co. (Tex. 1910), 131 S. W. 73, 79; Atchison, T. & S. F. Ry. Co. v. Ward (Tex. 1913), 159 S. W. 375, 380; Glenlyon Dye Works v. Interstate Express Co. (R. I. (1914), 91 Atl. 5; Texas & P. Ry. Co. v. White (Tex. 1915), 174 S. W. 953, 955; Burkenroad-Goldsmith Co. v. Illinois C. Rd. Co. (La. 1915), 70 So. 44; Jones v. Louisville & N. Rd. Co. (Mo. 1916), 182 S. W. 1064; Barrett v. Northern P. Ry. Co. (Idaho 1916), 157 Pac. 1016; Baker v. Memphis, D. & G. Ry. Co. (Tex. 1918), 208 S. W. 182.
5. Shultz v. Skaneateles Rd. Co., 122 N. Y. Supp. 445; Pecos & N. T. Ry. Co. v. Crews (Tex. 1911), 139 S. W. 1049, 1051.
6. Galveston H. & S. A. Ry. Co. v. Johnson, (Tex. 1911), 133 S. W. 725, 730.
7. Southern P. Co. v. Weatherford Cotton Mills (Tex. 1911), 134 S. W. 778, 779.
8. Carlton Produce Co. v. Belasco B. & N. Ry. Co. (Tex. 1910), 131 S. W. 1187, 1188.
9. Missouri, K. & T. Ry. Co. of Texas v. Carpenter, 52 Tex. Civ. App. 585, 587, 114 S. W. 900; Perkett v. Manistee & N. E. Rd. Co. (Mich. 1913), 141 N. W. 607, 641.
10. Fort Smith & W. Rd. Co. v. Aubrey (Okla. 1913), 134 Pac. 1117, 1118; Van Epps v. Atlantic C. L. Rd. Co. (S. C. 1916), 89 S. E. 1035.
11. Barrett v. Northern P. Ry. Co. (Idaho 1916), 157 Pac. 1016.
12. Central National Bank v. Pryor, (Mo. 1918), 207 S. W. 298.
13. Missouri, O. & G. Ry. Co. v. French (Okla. 1915), 152 Pac. 591.
14. Looney v. Oregon S. L. Rd. Co. (Ill. 1916), 111 N. E. 509, 510.
15. Myers & Co. v. Norfolk S. Rd. Co. (N. C. 1916), 88 S. E. 149, 150.
16. Aydlett v. Norfolk S. Rd. Co. (N. C. 1916), 89 S. E. 1000.

2005-C. INITIAL CARRIER NOT EXEMPTED FROM LIABILITY BY CONTRACT OR OTHER LIMITATION.

Section 20 (11) of the Interstate Commerce Act, (*as amended June 29, 1906 and March 4, 1915*), provides as follows:

That any common carrier, railroad, or transportation company subject to the provisions of this Act receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever, shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; \* \* \*.

The initial carrier of an interstate shipment cannot validly stipulate against its liability for any loss or damage not occurring on its own line.<sup>1</sup> Neither can it limit its liability to loss or damage occurring on its own line.<sup>2</sup>



A stipulation in an oral or written contract of an interstate shipment, limiting the liability of the initial carrier to losses occurring on its own line, stating that it did not agree to transport the cattle at any specified time, or deliver them at any particular hour, or in season for any particular market, and limiting the liability in case of loss to a specified sum, is void under the "Carmack Amendment" to the "Hepburn Act" making the receiving carrier liable for loss or damage caused by it or by connecting carriers and forbidding exemption from such liability.<sup>3</sup>

In an action against an initial carrier for loss or damage to an interstate shipment caused by a connecting carrier, an instruction limiting defendant's liability to the damage to stock occurring while the stock were in its possession is contract to the "Carmack Amendment" to the "Hepburn Act."<sup>4</sup>

The initial carrier is expressly made liable by the Interstate Commerce Act for the through carriage and a contract to the contrary is invalid.<sup>5</sup>

The proposition that in an interstate shipment under a contract limiting the liability of each carrier handling the shipment to its own line one carrier cannot be held liable for the negligence and delay of its connecting carrier, is contrary to the "Carmack Amendment."<sup>6</sup>

1. *Robertson v. Southern Ry. Co.* (Ala. 1912), 59 So. 232; *Central of Ga. Ry. Co. v. Sims*, 169 Ala. 295, 299, 53 So. 826; *Pittsburgh, C. C. & St. L. Ry. Co. v. Mitchell* (Ind. 1910), 91 N. E. 735, 739; *Dodge v. Chicago, St. P. M. & O. Ry. Co.* (Minn. 1910), 126 N. W. 627, 629; *St. Louis, I. M. & S. Ry. Co. v. Pape* (Ark. 1911), 140 S. W. 265, 267.
2. *Atlantic C. L. Rd. Co. v. Ward* (Ala. 1912), 58 So. 677, 678; *Southern P. Co. v. Lyon & Co.* (Miss. 1911), 54 So. 784; *Shidlovsky v. Mallory S. S. Co.* 111 N. Y. Supp. 778; *Southern P. Co. v. Meadors & Co.* (Tex. 1910), 129 S. W. 170, 172; *Old Dominion S. S. Co. v. Flannery & Co.* (Va. 1911), 69 S. E. 1107, 1108.
3. *Chicago, R. I. & P. Ry. Co. v. Miles*, 92 Ark. 573, 577, 123 S. W. 775.
4. *St. Louis, I. M. & S. Ry. Co. v. Furlow*, 89 Ark. 404, 412, 117 S. W. 517.
5. *Pittsburgh, C. C. & St. L. Ry. Co. v. Knox* (Ind. 1912), 98 N. E. 295, 300.
6. *Pecos & N. T. Ry. Co. v. Cox* (Tex. 1912), 150 S. W. 265, 267.

2005-D. A CARRIER RECEIVING GOODS FOR INTERSTATE SHIPMENT IS CONCLUSIVELY TREATED AS HAVING MADE A THROUGH CONTRACT OF CARRIAGE FROM POINT OF ORIGIN TO POINT OF DESTINATION.

A carrier voluntarily receiving property for transportation to a point on another line in another State is, under the "Carmack Amendment" of June 29, 1906, to the Interstate Commerce Act of February 4, 1887, conclusively treated as having made a through contract of carriage, rendering it liable for the other carrier's negligent failure to deliver the shipment to the consignee.<sup>1</sup>

1. *Galveston, H. & S. A. Ry. Co. v. Wallace* (1912), 223 U. S. 481, 56 L. Ed. 516, 32 Sup. Ct. Rep. 205.

2005-E. LIABILITY OF INITIAL CARRIER FOR THE FULL ACTUAL LOSS, DAMAGE, OR INJURY TO THE PROPERTY TRANSPORTED, NOTWITHSTANDING ANY LIMITATION OF LIABILITY, OR OF THE AMOUNT OF RECOVERY, OR REPRESENTATION OR AGREEMENT AS TO VALUE.

Section 20 (11) of the Interstate Commerce Act, (*as amended June 29, 1906 and March 4, 1915*), provides as follows:

That any common carrier, railroad, or transportation company subject to the provisions of this Act receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of

Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever, shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the matter or form in which it is sought to be made is hereby declared to be unlawful and void; \* \* \*

See "*Liability of the initial carrier for the full actual loss, damage, or injury to the property transported, notwithstanding any limitation of liability, or limitation of the amount of recovery, or representation or agreement as to value,*" Section 2014, *post*.

#### 2005-F. PURPOSE OF THE "CARMACK AMENDMENT."

In *Hudson v. Chicago, St. P. M. & O. Ry. Co.*<sup>1</sup> Mr. District Judge Booth in holding that in order to ascertain the meaning of the language of a statute relating to actions at law the situation at the time of the passage thereof may be considered, stated: "In construing the amendment, the question arises: What was the intention of Congress in passing the amendment? Was it the intention of Congress that, where a shipment in interstate commerce passed over the lines, we will say, of seven connecting common carriers, each one of them engaged in interstate commerce, that there should be seven bills of lading issued, one by each of the connecting carriers? Or, was it the intention of Congress that there should be but one bill of lading issued, viz., that by the initial carrier, which should govern and control the shipment from the initial point to the point of destination? The language of the amendment is not entirely clear on that point, and in order to ascertain what the real meaning of the language is it is allowable to look at the situation relative to actions such as the one at bar at the time when this Carmack amendment was passed.

"At that time the different state courts by their decisions had adopted different rules relative to actions for damages by shippers against common carriers. In some states, in a case of interstate commerce, where there had been several connecting common carriers, it was possible to sue the last of the connecting carriers, and by showing that the goods were delivered to the initial carrier in good condition, and that they were received from the last carrier in bad condition, a prima facie case was made out, and it rested then with the last carrier to exonerate itself from liability, so far as its line was concerned. In some states the rule was, when there were several carriers, and the initial carrier had undertaken to carry to a point beyond its own line, that such initial carrier might be held liable, not only for loss or dam-



age occurring on its own line, but also for loss or damage occurring on the succeeding connecting lines, on the principle of agency; that, having undertaken to carry to the point of destination, it made the connecting carriers its agents, and became liable for their acts. It was the rule in all of the states that a shipper might pick out from a route line of common carriers any particular common carrier, and sue it for loss or damage occurring on its own line; the burden of proof being upon him to show that the specific loss for which he claimed damage occurred on the line of the particular common carrier which he had picked out. It was the rule, in the federal courts and in some state courts, in case of a shipment over connecting lines of common carriers, that each common carrier might by contract limit its own liability to its own particular line.

"Such, briefly stated, was the situation when this Carmack amendment was passed by Congress. The purpose which Congress had in mind in passing the amendment is stated in the case of *Atlantic Coast Line v. Riverside Mills*, 219 U. S. 185, on page 196, 31 Sup. Ct. 164, on page 166, 55 L. Ed. 167, 31 L. R. A. (N. S.) 7, where the Supreme Court in its opinion says:

"The undisputable effect of the Carmack amendment is to hold the initial carrier engaged in interstate commerce and "receiving property for transportation from a point in one state to a point in another state" as having contracted for through carriage to the point of destination, using the lines of connecting carriers as its agents."

"The opinion, continuing further says that there had grown up a custom among the railroads as follows:

"These railway companies, though separate in themselves, are in the habit, for their own advantage, of making contracts, of which this was one, to convey goods along the whole line, to the ultimate terminus, each of them being agents of the other to carry them forward, and each receiving their share of the profits from the last."

"Further the opinion says:

"Along with this singleness of rate and continuity of carriage there grew up the practice by receiving carriers, illustrated in this case, of refusing to make a specific agreement to transport to points beyond its own line, whereby the connecting carrier for the purpose of carriage would become the agent of the primary carrier. The common form of receipt, as the court may judicially know, is one by which the shipper is compelled to make with each carrier in the route over which his package must go a separate agreement limiting the carrier liability of each separate company to its own part of the through route. As a result the shipper could look only to the initial carrier for recompense for loss, damage, or delay occurring on its part of the route. If such primary carrier was able to show a delivery to the rails of the next succeeding carrier, although the packages might and usually did continue the journey in the same car in which they had been originally loaded, the shipper must fail in his suit. He might, it is true, then bring his action against the carrier so shown to have next received the shipment. But here, in turn, he might be met by proof of safe delivery to a third separate carrier. In short, as the shipper was not himself in possession of the information as to when and where his property had been lost or damaged, and had no access to the records of the connecting carriers, who in turn had participated in some part of the transportation, he was compelled in many instances to make such settlement as should be proposed. This burdensome situation of the shipping public in reference to interstate shipments over routes including separate lines of carriers was the matter which Congress undertook to regulate. Thus, when this Carmack amendment was reported by a conference committee, Judge William Richardson, a Congressman from Alabama, speaking for the committee of the matter which it sought to remedy, among other things said: "One of the great complaints of the railroads has been—and, I think, a reasonable, just, and fair complaint—that when a man made a shipment, say, from Washington, for instance, to San Francisco, Cal., and his shipment was lost in some way, the citizen had to go thousands of miles, probably, to institute his suit. The result was that he had to settle his damages at what he could get. What have we done? We have made the initial carrier, the carrier that takes and receives the shipment, responsible for the loss of the article in the way of damages. We save the shipper from going to California or some other distant place to institute his suit. Why? The reason for inducing us to do that were that the initial carrier has a through route connection with the secondary carrier, on whose route the loss occurred, and a settlement between them will be an easy matter, while the shipper would be at heavy expense in the institution of a suit. If a judgment is obtained against the initial carrier, no doubt exists but that the secondary carrier would pay it at once."

“Still further the court in its opinion says:

“The rule (under the Carmack amendment) is adopted to secure the rights of the shipper by securing unity of transportation with unity of responsibility. The regulation is one which also facilitates the remedy of one who sustains a loss, by localizing the responsible carrier.”

“Finally it says:

“In substance Congress has said to such carriers: ‘If you receive articles for transportation from a point in one state to a place in another, beyond your own terminal, you must do so under a contract to transport to the place designated. If you are obliged to use the services of independent carriers in the continuance of the transit, you must use them as your own agents, and not as agents of the shipper.’”

“It seems to me that, in view of the opinion of the Supreme Court in that case, the real purpose of the Carmack amendment was to secure simplicity in the transportation of freight carried by several common carriers—as the Supreme Court express it, ‘unity of transportation with unity of responsibility \* \* \* by localizing the responsible carrier.’ Now, if that is the purpose of the amendment, the question arises: Would that purpose be effected by requiring each one, we will say, of seven connecting common carriers in an interstate shipment to issue a separate bill of lading? If this were done, we would have, on plaintiff’s theory, seven common carriers, six of whom would stand in the position of principals to succeeding carriers, and also six in the position of agents of the preceding carriers. All seven of them would stand in the position of principal so far as their own lines of railway were concerned. Instead of having localized the remedy, it would needlessly expand and extend it. For loss occurring on the line of the last carrier the shipper might sue any one of the seven carriers. It is true that, before the Carmack amendment was passed, he might have sued any one of the connecting carriers for its own default, or he might, in some states, have sued the last carrier for loss occurring prior to the time when the shipment came into its hands; and, if the contract read in the way it might read, he could sue the initial carrier for loss or damage occurring, not only on its own line, but on the lines of the connecting carriers. But he could not sue an intermediate carrier for loss or damage occurring on the line of a succeeding carrier, unless it had contracted to that effect.

“If the Carmack amendment is intended to simplify, rather than to render complex, interstate commerce and interstate shipments, and to unify and simplify, rather than multiply and mystify, the remedies of the shippers in obtaining compensation for their losses, it seems to me that it cannot bear the construction, claimed by plaintiff, that each common carrier in the line may be sued, not only for its own default, but for that of any succeeding carrier. The only case cited directly in point is the case of *Looney v. Railway Co.*, recently decided by the Illinois Court of Appeals. The decision in that case holds, as I read it, that the intermediate carrier in a line of connecting carriers is under no obligation to issue a bill of lading; but, if it does so, then it comes within the purview of the Carmack amendment, and becomes liable for a default by a succeeding carrier.

“With the highest respect for and deference to the court which decided the *Looney Case*, I am nevertheless unable to assent to the conclusion therein reached. The Carmack amendment specifically provides that, when a common carrier receives property for transportation in interstate commerce, it shall issue a bill of lading. If that applies to each one of a line of carriers, then it is not optional with the



intermediate carrier whether to issue a bill of lading or not; and if the Carmack amendment applies, the last common carrier is also obliged to issue a bill of lading. It seems to me that such was not the intention of Congress in passing the amendment. If the Carmack amendment does not compel the intermediate carrier to issue a bill of lading, then the obligation cannot be assumed by the intermediate carrier by the issuance of a bill of lading; for that would be allowing the intermediate carrier to give at its option special privileges to a shipper, without having these special privileges set out in its tariff on file, and that would be a violation of the Hepburn Act (Act June 29, 1906, c. 3591, 34 Stat. 584). So it seems to me that neither in the absence of a bill of lading, nor by issuing a bill of lading, can the intermediate carrier be held liable for loss or damage occurring on the line of the succeeding carrier."

In *Smeltzer v. St. Louis & S. F. Rd. Co.*<sup>2</sup> Mr. District Judge Rogers stated: "The Congress recognize the difficulty shippers, especially small shippers, had when goods were lost, and especially when they were damaged, to trace the goods and fix the liability and recover their loss. Not unfrequently the effort to do so involved more time and expense than the value of the goods damaged or lost. It recognized the additional fact that the facilities of the initial carrier were much greater than those of the shipper to locate the goods and fix the liability for loss or damage, and that it was, at all events, easily within the power of the carriers to adopt methods by which it could be done; methods, too, which were absolutely denied the shippers by reason of manifestly insuperable obstacles and conditions. The evident purpose of Congress in the enactment of the statute under consideration was to enable the shipper to have recourse to the receiving carrier, and leave it to its recourse upon the particular company which inflicted the injury. The act, I think, rests on a substantial and visible reason of public policy, which must address itself to every fair mind cognizant of the conditions which inspired this remedial legislation regulating the immense volume of interstate commerce in this vast country."

1. *Hudson v. Chicago, St. P. M. & O. Ry. Co.* (1915), 226 Fed. Rep. 38, 40, et seq.

2. *Smeltzer v. St. Louis & S. F. Rd. Co.* (1908), 158 Fed. Rep. 649, 666, et seq.; *St. Louis & S. F. Rd. Co. v. Akard* (Okla. 1916), 159 Pac. 344.

#### 2005-G. NATURE AND SCOPE OF LIABILITY IMPOSED UPON THE INITIAL CARRIER BY THE "CARMACK AMENDMENT."

In the case of *Adams Express Co. v. Croninger*,<sup>1</sup> the United States Supreme Court, per Mr. Justice Lurton, stated: "The original Interstate Commerce Act of February 4, 1887, was extensively amended by the act of June 29, 1906. We may pass by many of the changes and amendments made by the latter act as not decisive, and come at once to the far more important amendments made in the 20th section—an amendment bearing directly upon the carrier's liability or obligation under interstate contracts of shipment, and generally referred to as the Carmack amendment. \* \* \* This amendment came under consideration in *Atlantic Coast Line R. Co. v. Riverside Mills*, 219 U. S. 186, 55 L. Ed. 167, 31 L. R. A. (N. S.) 7, 31 Sup. Ct. Rep. 163; but the opinion and judgment was confined to that provision of the act which made the initial carrier liable for a loss upon the line of a connecting

carrier, the property having been received under a bill of lading which confined the liability of the initial carrier to loss occurring upon its own line.

“The significant and dominating features of that amendment are these:

“First. It affirmatively requires the initial carrier to issue ‘a receipt or bill of lading therefor,’ when it receives ‘property for transportation from a point in one state to a point in another.’

“Second. Such initial carrier is made ‘liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it.’

“Third. It is also made liable for any loss, damage, or injury to such property caused by ‘any common carrier, railroad, or transportation company to which such property may be delivered, or over whose line or lines such property may pass.’

“Fourth. It affirmatively declares that ‘no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed.’

“Prior to that amendment, the rule of carriers’ liability, for an interstate shipment of property, as enforced in both Federal and state courts, was either that of the general common law, as declared by this court and enforced in the Federal courts throughout the United States (*Hart v. Pennsylvania R. Co.*, 112 U. S. 331, 28 L. Ed. 717, 5 Sup. Ct. Rep. 151), or that determined by the supposed public policy of a particular state (*Pennsylvania R. Co. v. Hughes*, 191 U. S. 477, 48 L. Ed. 268, 24 Sup. Ct. Rep. 132), or that prescribed by statute law of a particular state (*Chicago, M. & St. P. R. Co. v. Solan*, 169 U. S. 133, 42 L. Ed. 688, 18 Sup. Ct. Rep. 289).

“Neither uniformity of obligation nor liability was possible until Congress should deal with the subject. The situation was well depicted by the supreme court of Georgia in *Southern P. Co. v. Crenshaw Bros.*, 5 Ga. App. 675, 63 S. E. 865, where that court said:

“ ‘Some states allow carriers to exempt themselves from all or a part of the common-law liability by rule, regulation, or contract; others did not. The Federal courts sitting in the various states were following the local rule, a carrier being held liable in one court when, under the same state of facts, he would be exempt from liability in another. Hence this branch of interstate commerce was being subjected to such a diversity of legislative and judicial holding that it was practically impossible for a shipper engaged in a business that extended beyond the confines of his own state, or a carrier whose lines were extensive, to know, without considerable investigation and trouble, and even then oftentimes with but little certainty, what would be the carrier’s actual responsibility as to goods delivered to it for transportation from one state to another. The congressional action has made an end to this diversity, for the national law is paramount and supercedes all state laws as to the rights and liabilities and exemptions created by such transactions. This was doubtless the purpose of the law; and this purpose will be effectuated, and not impaired or destroyed, by the state courts’ obeying and enforcing the provisions of the Federal statute where applicable to the act in such cases as shall come before them.’



“That the legislation supersedes all the regulations and policies of a particular state upon the same subject results from its general character. It embraces the subject of the liability of the carrier under a bill of lading which he must issue, and limits his power to exempt himself by rule, regulation, or contract. Almost every detail of the subject is covered so completely that there can be no rational doubt but that Congress intended to take possession of the subject, and supersede all state regulation with reference to it. Only the silence of Congress authorized the exercise of the police power of the state upon the subject of such contracts. But when Congress acted in such a way as to manifest a purpose to exercise its conceded authority, the regulating power of the state ceased to exist. *Northern P. R. Co. v. Washington*, 222 U. S. 370, 56 L. Ed. 237, 32 Sup. Ct. Rep. 160; *Southern R. Co. v. Reid*, 222 U. S. 424, 56 L. Ed. 257, 32 Sup. Ct. Rep. 140; *Second Employers' Liability Cases (Mondou v. New York, N. H. & H. R. Co.)*, 223 U. S. 1, 56 L. Ed. 327, 38 L. R. A. (N. S.) 44, 32 Sup. Ct. Rep. 169.

“To hold that the liability therein declared may be increased or diminished by local regulation or local views of public policy will either make the provision less than supreme, or indicate that Congress has not shown a purpose to take possession of the subject. The first would be unthinkable, and the latter would be to revert to the uncertainties and diversities of rulings which led to the amendment. The duty to issue a bill of lading, and the liability thereby assumed, are covered in full; and though there is no reference to the effect upon state regulation, it is evident that Congress intended to adopt a uniform rule and relieve such contracts from the diverse regulation to which they had been theretofore subject.

“What is the liability imposed upon the carrier? It is a liability to any holder of the bill of lading which the primary carrier is required to issue ‘for any loss, damage, or injury to such property caused by it,’ or by any connecting carrier to whom the goods are delivered. The suggestion that an absolute liability exists for every loss, damage, or injury, from any and every cause, would be to make such a carrier an absolute insurer, and liable for unavoidable loss or damage, though due to uncontrollable forces. That this was the intent of Congress is not conceivable. To give such emphasis to the words, ‘any loss or damage,’ would be to ignore the qualifying words, ‘caused by it.’ The liability thus imposed is limited to ‘any loss, injury, or damage caused by it or a succeeding carrier to whom the property may be delivered’; and plainly implies a liability for some default in its common-law duty as a common carrier.

“But it has been argued that the nonexclusive character of this regulation is manifested by the proviso of the section, and that state legislation upon the same subject is not superseded, and that the holder of any such bill of lading may resort to any right of action against such a carrier, conferred by existing state law. This view is untenable. It would result in the nullification of the regulation of a national subject, and operate to maintain the confusion of the diverse regulation which it was the purpose of Congress to put an end to.

“What this court said of the 22d section of this act of 1887 in the case of *Texas & P. R. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, 51 L. Ed. 553, 27 Sup. Ct. Rep. 350, 9 Sup. Ct. Rep. 1075, is applicable to this contention. It was claimed that that section continued in force

all rights and remedies under the common law or other statutes. But this court said of that contention what must be said of the proviso in the 20th section, that it was evidently only intended to continue in existence such other rights or remedies for the redress of some specific wrong or injury, whether given by the interstate commerce act, or by state statute, or common law, not inconsistent with the rules and regulations prescribed by the provisions of this act. Again, it was said of the same clause, in the same case, that it could not in reason be construed as continuing in a shipper a common-law right the existence of which would be inconsistent with the provisions of the act. In other words, the act cannot be said to destroy itself.

“To construe this proviso as preserving to the holder of any such bill of lading any right or remedy which he may have had under existing Federal law at the time of his action gives to it a more rational interpretation than one which would preserve rights and remedies under existing state laws, for the latter view would cause the proviso to destroy the act itself. One illustration would be a right to a remedy against a succeeding carrier, in preference to proceeding against the primary carrier, for a loss or damage incurred upon the line of the former. The liability of such succeeding carrier in the route would be that imposed by this statute, and for which the first carrier might have been made liable.”

The “Carmack Amendment” does not have the effect of rendering the initial carrier in interstate shipments over more than one line liable for any loss, damage, or injury caused by it or a connecting carrier. Irrespective of any question of negligence, as to hold that the question of negligence or no negligence is not an issue under the “Carmack Amendment” would deprive the connecting carriers of right *inter se*. The effect of the amendment is to re-establish the common-law rule that when freight is delivered to a carrier in good condition and reaches its destination in bad condition, or fails to reach its destination at all, the presumption of negligence arises; the rule, however, is modified by the right of each carrier handling freight to relieve itself of liability by proof showing that absence of negligence on its part, and further proof tending to detect the guilty party. Congress intended to give to the shipper a direct and ready remedy for the collection of his damage, and places upon the carrier the burden of locating the particular company guilty of the wrong and to set aside the presumption that the injury resulted from the act of the last carrier. It was further intended to annul the stipulation, almost universally found in bills of lading, which limits the liability of each successive connecting carrier to damages resulting upon its own line, and in all cases, to throw the burden of exonerating itself from liability upon the carrier.<sup>2</sup>

The liability imposed by the “Carmack Amendment” was not to impose upon the initial carrier a liability for its own conduct different from or greater than that imposed upon it by the common law, but to impose upon it in favor of the shipper the liability to him under the common law incurred by its connecting carriers.<sup>3</sup>

The “Carmack Amendment” renders void the terms of the shipping receipt, which provides that the shipper should assume all risk and expense of feeding, watering, bedding and otherwise caring for the live stock while in cars, yards, pens or elsewhere, and should load and unload the same at his own expense and risk. The carrier under the



common law is primarily liable for all damages caused by its failure to feed, water, properly load and unload, and otherwise care for live stock while in its possession, and it cannot under the "Carmack Amendment" make a valid contract shifting its liability to the shipper.<sup>4</sup>

The liability imposed by the "Carmack Amendment" on the original carrier from point of origin to point of destination, is inclusive of that which is caused by neglect as well as of that caused by positive act.<sup>5</sup>

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1. *Adams Express Co. v. Croninger* (1913), 226 U. S. 491, 57 L. Ed. 314, 319, 33 Sup. Ct. Rep. 148; *St. Louis & S. F. Rd. Co. v. Zickafoose* (Okla. 1913), 135 Pac. 406; *Atlantic C. L. Rd. Co. v. Sandlin* (Fla. 1918), 78 So. 666.
  2. *Pecos & N. T. Ry. Co. v. Meyer* (Tex. 1913), 155 S. W. 309, 314.
  3. *Stevens & Russell v. St. Louis S. W. Ry. Co.* (Tex. 1915), 178 S. W. 810, 813.
  4. *Chicago, R. I. & G. Ry. Co. v. Scott* (Tex. 1912), 156 S. W. 294, 297.
  5. *Lewis Poultry Co. v. New York C. Rd. Co.* (Me. 1918), 105 Atl. 109.
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2005-H. LIABILITY OF THE INITIAL CARRIER FOR DAMAGES SUSTAINED BY REASON OF DELAY TO PROPERTY TRANSPORTED IN INTERSTATE AND FOREIGN COMMERCE.

See "*Liability of the initial carrier for damages sustained by reason of delay to property transported in interstate and foreign commerce*," Section 2015, *post*.

2005-I. LIABILITY OF INITIAL CARRIER FOR LOSS, DAMAGE, OR INJURY TO PROPERTY WHILE THE SAME IS IN THE CUSTODY OF A WATER CARRIER.

Section 20 (11) of the Interstate Commerce Act contains the following proviso:

That if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by and under the laws and regulations applicable to transportation by water, and the liability of the initial carrier shall be the same as that of such carrier by water.<sup>1</sup>

This provision of the Act legalizes Section 8 of the Carriers' Uniform Bill of Lading which provides as follows:

Except in cases of diversion from rail to water route, which is provided for in section 2 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances; or from collision, stranding, or other accidents or navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lightering across rivers or in lake or other harbors, and the liability for such lightering shall be governed by the other section of this instrument.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this Bill of Lading.

See "*Limitation of vessel owner's liability in foreign commerce*," Section 2009, *post*.

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1. See discussion in *Black & White River Transportation Co. v. Missouri P. Ry. Co.* (1915), 37 I. C. C. Rep. 244, with reference to the establishment of joint through routes and rates with water carriers where the rail carriers objected to so doing.

2005-J. LIMITED-LIABILITY PROVISIONS OF SECTION 20 OF THE ACT NOT APPLICABLE TO THE CARRIAGE OF BAGGAGE.

Section 20 (11) of the Interstate Commerce contains the following proviso:

That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to the baggage carried on passenger trains or boats, or trains or boats carrying passengers; \* \* \*

See "*Limited-liability provisions of Section 20 of the Act not applicable to the carriage of baggage*," Section 2007, *post*.

2005-K. LIMITED-LIABILITY PROVISIONS OF SECTION 20 OF THE ACT INAPPLICABLE TO PROPERTY, OTHER THAN ORDINARY LIVE STOCK, WHERE RATES DEPENDENT UPON DECLARED VALUATION ARE AUTHORIZED OR REQUIRED BY THE INTERSTATE COMMERCE COMMISSION.

Section 20 (11) of the Interstate Commerce Act contains the following proviso:

That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, \* \* \* second, to property, *except ordinary live stock*, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of *section ten of this Act*,<sup>1</sup> to regulate commerce, as amended; \* \* \*

See "*Rates dependent upon a declared or released valuation as authorized or required by the Interstate Commerce Commission*," Section 2013, *post*.

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1. Section 10 of the Act relates to penalties and forfeitures for violations thereof.

2005-L. LIMITED-LIABILITY PROVISIONS OF SECTION 20 INAPPLICABLE TO LIVE STOCK, OTHER THAN "ORDINARY LIVE STOCK."

The provisions of Section 20 (11) of the Interstate Commerce Act respecting liability for full actual loss, damage, or injury, and declaring any limitation thereof to be unlawful and void, are applicable to ordinary live stock, but do not apply to live stock for special uses. The act defines the term "ordinary live stock" as follows:

The term "ordinary live stock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, raising, show purposes, or other special uses.

See "*Limited-liability provisions of Section 20 of the Act governing the transportation of live stock*," Section 2006, *post*.

2005-M. CONSTITUTIONALITY OF PROVISIONS OF SECTION 20 OF THE ACT GOVERNING INITIAL CARRIER'S LIABILITY.

See "*Constitutionality of provisions of Section 20 of the Act governing initial carrier's liability, and limitation of carrier's liability, for loss, damage, or injury to property transported in interstate or foreign commerce*," Section 2018, *post*.



2005-N. LIMITED-LIABILITY PROVISIONS OF SECTION 20 OF THE ACT APPLICABLE TO PROPERTY RECEIVED FOR TRANSPORTATION FROM ANY POINT IN THE UNITED STATES TO A POINT IN AN ADJACENT FOREIGN COUNTRY.

The "Carmack Amendment," enacted in 1906, provided as follows:

That any common carrier, railroad, or transportation company *receiving property for transportation from a point in one state to a point in another state* shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed.

The provision was extended by the "Cummins Amendment," effective June 2, 1915, so as to include and apply to property received for transportation "*from any point in the United States to a point in an adjacent foreign country.*"

2005-O. THE LIABILITY PROVISIONS OF SECTION 20 OF THE ACT DO NOT APPLY TO COMMERCE BETWEEN THE UNITED STATES AND NON-ADJACENT FOREIGN COUNTRIES.

A domestic carrier is not liable for loss occasioned by the negligence of a foreign carrier or for transportation to foreign countries, but only as to commerce between the states and territories within the United States.<sup>1</sup>

In *Hamlen & Sons Co. v. Illinois C. Rd. Co.*<sup>2</sup> Mr. District Judge Trieber stated: "As the defendant had never published or filed with the Interstate Commerce Commission a through rate to Buenos Aires, it was neither required nor could it make a through rate without violating the Interstate Commerce Law. *Southern Railroad Co. v. Reid*, 222 U. S. 424, 441, 32 Sup. Ct. 140, 56 L. Ed. 257. The bills of lading expressly provide that the carrier issuing the same only issued them on its own behalf over its own lines, and as agent for the connecting lines, without a joint, but several, liability, and as the Carmack amendment applies only to transportation between the states, and not to foreign countries the defendant is clearly not liable under the bill of lading, even if it had been the initial carrier which had issued the bill of lading, which it was not, except for the car from Pennsylvania."

In *In Re The Cummins Amendment*<sup>3</sup> the Commission stated: "3. Does the amendment to the act apply to export and import shipments to and from foreign countries not adjacent to the United States?"

"This must be answered in the negative, in view of the fact that, while specifically stating that its terms shall apply to property received for transportation from certain points to certain other points, it makes no reference to shipments from a point in the United States to a point in a nonadjacent foreign country, or from a nonadjacent foreign country to a point in the United States."

1. *Aldrich v. Atlantic C. L. Rd. Co.* (S. C. 1916), 89 S. E. 315.

2. *Hamlen & Sons Co. v. Illinois C. Rd. Co.* (1914), 212 Fed. Rep. 324, 326, et seq., cited in *Brunswick-Balke-Collender Co. v. Toledo, S. & M. Ry. Co.* (1917), 44 I. C. C. Rep. 598, 600.

3. *In Re The Cummins Amendment* (1915), 33 I. C. C. Rep. 692, 693, cited in, *Brunswick-Balke-Collender Co. v. Toledo, S. & M. Ry. Co.* supra.

2005-P. STATUTE NOT APPLICABLE TO FOREIGN COMMERCE TO COUNTRIES NOT ADJACENT WHERE THE INLAND RAIL MOVEMENT IS WHOLLY WITHIN ONE STATE.

Under the "Carmack Amendment" making the initial carrier liable for loss or damage caused by its own or the line of a connecting carrier, as to shipments "from a point in one state to a point in another state, and forbidding exemption from such liability, the word "state" refers to a state of the Union and not to a foreign country, and the amendment has, therefore, no application to a shipment received in Texas to be carried via Galveston to Bremen, Germany.<sup>1</sup>

In *Brunswick-Balke-Collender Co. v. Toledo S. & M. Ry. Co.*<sup>2</sup> the Commission stated: "It is clear from the wording of the pertinent provisions of these acts of Congress, considered as of the time of their taking effect, that when the shipment in question moved, during the year 1913, the initial carrier receiving property at a point in the United States for transportation to a foreign country was not liable for loss, damage, or injury thereto when caused by carriers parties to the transportation beyond our ports or borders. While it is true that this shipment moved from a point in one state to a point in another state of the United States in reaching the port of export, its essential character was that of 'foreign commerce' or *property received for transportation to an adjacent foreign country*; and that Congress did not regard the Carmack amendment as applicable to such shipments may be inferred from the fact above indicated that the provisions of that amendment were extended by the Cummins amendment to specifically apply to commerce to an adjacent foreign country. In *Hamlen & Sons Co. v. Illinois Central R. R. Co.*, 212 Fed. 324, a case involving somewhat similar questions, the United States district court for the eastern district of Arkansas stated:

"\* \* \* as the Carmack amendment applies only to transportation between the states, and not to foreign countries, the defendant is clearly not liable under the bill of lading, even if it had been the initial carrier which had issued the bill of lading."

See "*Limitation of vessel owner's liability in foreign commerce*," Section 2009, *post*.

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1. *Houston, E. & W. T. Ry. Co. v. Inman* (Tex. 1911), 134 S. W. 275, 277.

2. *Brunswick-Balke-Collender Co. v. Toledo S. & M. Ry. Co.* (1917), 44 I. C. C. Rep. 598, 600. See also, *In Re The Cummins Amendment* (1915), 33 I. C. C. Rep. 682, 693.

2005-Q. LIABILITY PROVISIONS OF SECTION 20 OF THE ACT DO NOT EXTEND TO TRAFFIC NOT YET DELIVERED INTO THE POSSESSION OF THE CARRIER FOR TRANSPORTATION.

Obviously, property intended for shipment is not impressed with the character of interstate commerce until the same is received by the carrier for transportation as such. Therefore, until the shipment is at least offered to the carrier for transportation it does not bear the relationship of a common carrier toward such property.

The provisions of the "Carmack Amendment" do not render the initial carrier liable for loss or injury to cattle occurring before the same were unloaded and resulting from their escape from the stock pen of the carrier at the point of origin.<sup>1</sup>



Where goods are merely delivered to a carrier or deposited in its warehouse and are not to be transported until further orders from the owner, the carrier's liability is that of a warehouseman or bailee only.<sup>2</sup>

1. *St. Louis, I. M. & S. Ry. Co. v. Jones* (Ark. 1910), 125 S. W. 1025, 1029.
2. *Wilson v. International Ry. Co.* 160 N. Y. Supp. 367; *Louisville & N. Rd. Co. v. United States* 39 Ct. Cl. 405, cited in, *In the Matter of Bills of Lading* (1919), 52 I. C. C. Rep. 671, 704.

2005-R. LIABILITY OF INITIAL CARRIER FOR THE ISSUANCE OF A BILL OF LADING WITHOUT RECEIVING GOODS COVERED THEREBY.

Section 22 of the Federal Bill of Lading Act<sup>1</sup> provides as follows:

That if a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor for transportation in commerce among the several states and with foreign nations, the carrier shall be liable to (a) the owner of goods covered by a straight bill subject to existing right of stoppage in transitu, or, (b) the holder of an order bill, who has given value in good faith, relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

For forms of domestic and export bills of lading prescribed by the Interstate Commerce Commission, see "*Forms of bills of lading prescribed by the Interstate Commerce Commission for use in interstate and foreign commerce*," Section 2016-W, *post*.

1. Federal Bill of Lading Act, Section 22. An Act relating to bills of lading in interstate and foreign commerce, approved August 29, 1916, (39 Stat. L. 538).

2005-S. STATUS OF INITIAL CARRIER'S LIABILITY WHERE GOODS ARE HELD IN TRANSIT BECAUSE OF INTERRUPTED TRANSPORTATION.

Where goods are held at an intermediate point because of interrupted transportation and not at the instance of the owner of the goods, the liability of the initial carrier is the same as if there had been no stoppage in transit. In *In the Matter of Bills of Lading*<sup>1</sup> the Commission stated: "As has been said with respect to the liability of the carrier as a warehouseman of goods while they are in transit: The owner loses sight of his goods when he delivers them to the first carrier and has no means of learning their whereabouts until he or the consignee is informed of their arrival at destination. At each successive point of transfer from one carrier to another they are liable to be placed in warehouses, or to be delayed by the accumulation of freight or other causes and exposed to loss by fire or theft. Superadded to these risks are the dangers of loss by collusion, quite as imminent while the goods are thus stored at some point unknown to the owner as while they are in actual transit. As a general rule, the starting of the goods under such circumstances should be held to be a mere incident to the transportation, and they should be under the protection of the rule which makes the carrier liable as an insurer from the time the owner transfers their possession to the first carrier until they are delivered to him at the end of the route. *McDonald v. The Railroad*, 34 N. Y. 497; see also *Lewis v. Chesapeake & O. Ry. Co.*, 47 W. Va. 656; *Southard v. Minneapolis, St. P. & S. S. M. Ry. Co.*, 60 Minn., 382."

1: In the Matter of Bills of Lading (1919), 52 I. C. C. Rep. 671, 704.

2005-T. STOPPING CAR IN TRANSIT TO RECEIVE ADDITIONAL LADING DOES NOT IMPAIR THE SHIPPER'S RIGHT AGAINST THE INITIAL CARRIER UNDER SECTION 20 OF THE ACT.

Where the bill of lading issued by the initial carrier of an interstate shipment provides that additional goods may be loaded into the cars at points on the connecting lines, the stopping of the cars at such line to receive the goods does not amount to a delivery to the shipper, so as to deprive him of his remedy under the "Carmack Amendment" against the initial carrier for loss or damage caused by the connecting carrier.<sup>1</sup>

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1. *De Winter & Co. v. Texas C. Rd. Co.* (N. Y. 1912), 135 N. Y. Supp. 893, 897.

2005-U. INITIAL CARRIER LIABLE UNDER SECTION 20 OF THE ACT, ON AN INTERSTATE SHIPMENT, REGARDLESS OF THE CHARACTER OF THE CONNECTING CARRIER.

Where the initial carrier accepts goods for transportation from a point in one State to a point in another State it is liable under the "Carmack Amendment" for damage to the goods resulting from the act of the connecting carrier although the line of the initial carrier lies wholly within the State of the origin of the traffic.<sup>1</sup>

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1. *Shultz v. Skaneateles Rd. Co.*, 122 N. Y. Supp. 445.

2005-V. LIABILITY OF INITIAL CARRIER WHERE TRAFFIC IS DIVERTED WRONGFULLY BY THE CONNECTING CARRIER.

Where a connecting carrier causes damage to an interstate shipment by the wrongful diversion of the same, the shipper may, under the "Carmack Amendment" recover for such damage of the initial carrier.<sup>1</sup>

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1. *Kemendo v. Fruit Dispatch Co.* (Tex. 1910), 131 S. W. 73, 79.

2005-W. LIABILITY OF THE INITIAL CARRIER WHERE THE CONNECTING CARRIER DIVERTS A SHIPMENT WITH ITS CONSENT.

Where an interstate shipment is specifically routed over the lines of connecting carrier by the shipper, and the connecting carrier *in conjunction with the initial carrier*, alters the routing and diverts the shipment in such a way as to result in the loss of the same the initial carrier is liable under the "Carmack Amendment."<sup>1</sup>

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1. *Drake v. Nashville C. & St. L. Rd. Co.* (Tenn. 1911), 148 S. W. 214, 218.

2005-X. INITIAL CARRIER NOT LIABLE WHERE THE TRAFFIC IS DIVERTED BY THE CONNECTING CARRIER TO A POINT BEYOND THAT SHOWN IN THE BILL OF LADING AND WITHOUT THE CONSENT OF THE INITIAL CARRIER.

The Uniform Bills of Lading, prescribed by the Interstate Commerce Commission for use in interstate and foreign commerce, provides as follows:

Sec. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall



be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

Sec. 9. Any alteration, addition, or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

Defendant, initial carrier received a shipment of shingles at Sisco, Wash., to be carried to Kankakee, Ill. Defendant transported the same to Minnesota Transfer in an ordinary box car and delivered the shingles to the connecting carrier, which road, without the knowledge of defendant initial carrier, transferred the shingles to open gondola cars and forwarded the cars to Kankakee. Thereafter, and before the arrival of the cars at Kankakee, plaintiff sold the shingles and, without notice to defendant, instructed the delivering carrier to divert the shipment to a point in New Jersey. *HELD*, the initial carrier was not liable for any damages to the shingles occurring while they were en route from Kankakee to the New Jersey point, for while the initial carrier by the "Carmack Amendment" is liable for loss or damage caused by connecting carriers, that liability cannot be extended to lines beyond the destination fixed in the bill of lading.<sup>1</sup>

Where an interstate shipment of live stock from Nevada to Kentucky was stopped in Illinois, the original bill of lading surrendered, the stock transferred to other cars, mingled with other stock, and shipped to destination under new bill of lading, it was held, in the absence of showing of a violation of the interstate commerce law, the carrier issuing the new bill of lading became the initial carrier to destination.<sup>2</sup>

Where vegetables were billed from and shipped to points in the same State, and were not intended for another State, but after the car arrived at destination the shipper entered into a new agreement with another company to ship to another State, this could not relate back to the origin of original shipment and change its character so as to hold the initial carrier liable for damages while in the possession of the latter, under the "Carmack Amendment."<sup>3</sup>

In *Missouri, K. & T. Ry. Co. of Texas v. Ward*<sup>4</sup> the United States Supreme Court held that the terms of the original bill of lading for an interstate shipment issued under the "Carmack Amendment" of 1906, which governs the entire transportation, could not be altered by a second bill of lading issued by a connecting carrier, since the latter was already bound to transport the shipment at the rate and upon the terms named in the original bill of lading, and the acceptance by the shipper of the second bill was, therefore, without consideration and was void.

See "*Liability of initial carrier under a through bill of lading on an interstate shipment cannot be altered by the issuance of a second bill of lading by a connecting carrier.*" Section 2005-FF, post.

**QUAERE:** Under the decision of the United States Supreme Court in *Missouri, K. & T. Ry. Co. of Texas v. Ward*, *supra*, holding that the terms of the original bill of lading for an interstate shipment governs the entire transportation from point of origin to destination, and that the same could not be altered by a connecting carrier, no valid reconsignment can be effected on basis of the through rate from the original point of origin to the new or substituted destination, in the absence of special tariff authority to the contrary, unless the consent of the initial carrier to such extended transportation is

indorsed on the original bill of lading in accordance with the stipulations therein, and the only rate which may legally be applied on a reshipment is the combination of rates on the reshipping point. It is clear that if the authority to reship the property is consented to by the initial carrier indorsed on the bill of lading, that this action amounts to an innovation in the original contract of shipment, and, therefore, there being a valid reconsignment, the freight charges are properly based upon the through rate from the original point of origin to the substituted destination, and not the combination of rates on the reshipping point. However, it is equally clear that upon the failure of the shipper to obtain the prior consent of the initial carrier by proper indorsement as required by the terms of the bill of lading, there can be no valid reconsignment in the legal acceptance of that term, and that when the traffic reaches the destination provided for in the original bill of lading the original transportation contract is fully executed as far as the carrier is concerned and the charges must be assessed on basis of the rates from the point of origin to the point of destination named in the original bill of lading. If subsequently, the goods are reshipped to another destination the latter movement, being separate and independent from the original movement, is under a new contract of shipment and the rate applicable to such subsequent movement is the rate from the reshipping point to the new destination. In other words, in the absence of the shipper obtaining the consent of the initial carrier to the reconsignment there are in fact, and by operation of law, two separate and independent movements governed by separate rates, and this is true, even though the reshipment was effected by a connecting carrier before the property reached the first destination named in the original bill of lading. In other words, no technical "reconsignment," as that term is used in its legal acceptance, can be effected without the consent of the initial carrier.

See "*Status of transportation within a State of traffic originating at a point without the State, or intended for ultimate delivery at a point without the State, where the State movement is under a new bill of lading, or contract of shipment, and the traffic is not unloaded at the intermediate point.*" Section 400-D, ante.

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1. Parker-Bell Lumber Co. v. Great N. Ry. Co. (Wash. 1912), 124 Pac. 389, 390.
  2. Louisville & N. Rd. Co. v. Johnson (Ky. 1918), 206, S. W. 638.
  3. Bracht v. San Antonio & A. P. Ry. Co. (Mo. 1919), 209 S. W. 579, affirmed, Bracht v. San Antonio & A. P. Ry. Co. (1921), 65 L. Ed. 173, .... U. S. ...., .... Sup. Ct. Rep. ....
  4. Missouri, K. & T. Ry. Co. of Texas v. Ward (1917), 244 U. S. 383, 37 Sup. Ct. Rep. 617, 61 L. Ed. 1213.

#### 2005-Y. INITIAL CARRIER NOT LIABLE FOR GOODS SOLD BY THE DELIVERING CARRIER TO SATISFY ACCRUED TRANSPORTATION CHARGES.

The initial carrier is not liable under the "Carmack Amendment," making it answerable for loss of any interstate shipment occurring on the line of the connecting carrier, where the loss complained of arises from the sale of the goods by the latter carrier to satisfy freight charges after the consignee has negligently failed to call for them and the connecting carrier has placed them in its warehouse.<sup>1</sup>

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1. Norfolk & W. Ry Co. v. Stuart Draft Co. 109 Va. 184, 188, 63 S. E. 415.



2005-Z. INITIAL CARRIER EXEMPT FROM LIABILITY FOR LOSS OR DAMAGE RESULTING FROM THE ACT OF GOD, THE PUBLIC ENEMY, OR OTHER VIS MAJOR.

The "Carmack Amendment" does not have the effect of making the initial carrier liable for loss or damage occurring on the line of the connecting carrier where such loss or damage results from the act of God or the public enemy.<sup>1</sup>

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1. *Cleveland, C. C. & St. L. Ry. Co. v. Hayes* (Ind. 1913), 102 N. E. 34, 39.

2005-AA. STATUS OF THE INITIAL CARRIER'S LIABILITY WHERE THE LIABILITY OF THE CONNECTING OR DELIVERING CARRIER HAS CHANGED TO THAT OF A WAREHOUSEMAN.

Where the connecting carrier of an interstate shipment has terminated its functions as a common carrier and has assumed the relation of a warehouseman, the initial carrier is not liable, under the "Carmack Amendment" for the failure of the connecting carrier to deliver the goods to the shipper.<sup>1</sup>

The initial carrier is not liable for damages accruing on a connecting line where the terminal carrier notified the consignee of the arrival of the shipment and it was not removed within the 48 hours free time, as the initial carrier's liability thereafter for the acts of the terminal carrier was that of a warehouseman, in view of the provisions of the bill of lading.<sup>2</sup>

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1. *Louisville & N. Rd. Co. v. Brewer* (Ala. 1913), 62 So. 698.

2. *Briggs Hardware Co. v. Aroostock Valley Rd. Co.* (Me. 1918), 104 Atl. 8.

2005-BB. LIABILITY OF INITIAL CARRIER WHERE THE DELIVERING CARRIER GAVE NO NOTICE TO THE SHIPPER OF THE REFUSAL OF THE SHIPMENT BY THE CONSIGNEE, AND THE SHIPMENT IS DESTROYED BY FIRE WHILE IN THE POSSESSION OF THE DELIVERING CARRIER.

A carload of whiskey was shipped from a point in Kentucky to a point in Georgia and the bill of lading issued to the order of the consignor with instructions to notify the consignee. On arrival of the goods the consignee was notified and refused to accept them. The delivering carrier gave no notice of this refusal to the consignor and placed the goods in its depot building where they were destroyed by fire. *HELD*, That under the "Carmack Amendment" making the initial carrier liable for loss or damage on the line of the connecting carrier, the initial carrier in this case was liable for the loss of the whiskey, as under the circumstances it was still in interstate "transportation" within the meaning of that term as used in the Interstate Commerce Act.<sup>1</sup>

If, under the Interstate Commerce Act, the initial carrier may be liable for the failure of the final carrier to notify the consignor of the nonacceptance by the consignee, it is only where it was the duty of the final carrier to so notify the consignor.<sup>2</sup>

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1. *Nashville C. & St. L. Ry. Co. v. Dreyfuss-Weil Co.* (Ky. 1912), 150 S. W. 321, 432.

2. *Markowitz v. New York C. Rd. Co.* 172 N. Y. Supp. 233.

2005-CC. LIABILITY OF AN INITIAL CARRIER FOR THE WRONGFUL DELIVERY OR MISDELIVERY OF AN INTERSTATE SHIPMENT BY THE DELIVERING CARRIER.

Under the "Carmack Amendment" the initial carrier of an interstate shipment is liable for a misdelivery by the terminal carrier.<sup>1</sup>

Where the shipment involved transportation between points in different states over the lines of several connecting railroads engaged as common carriers, and a conversion was committed by the last carrier by making a wrongful delivery of the goods, the holder of the bill of lading had an option to sue the initial carrier under the provisions of the "Carmack Amendment"; and where the holder of the bill of lading obtained a judgment for the conversion against the initial carrier alone, the judgment not being one against the last carrier, it will amount to such liquidation of the demand between those parties as to render it subject to garnishment at the suit of a creditor of the holder of the bill of lading.<sup>2</sup>

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1. *King v. Barbarin* (1917), 249 Fed. Rep. 303; *Kemper Mill Co. v. Missouri P. Ry. Co.* (Mo. 1916), 186 S. W. 8.

2. *Southern Ry. Co. v. Hodgson Bros. Co.* (Ga. 1919), 98 S. E. 541.

2005-DD. LIABILITY OF CARRIER TO REFUND PREPAID FREIGHT CHARGES.

When the bill of lading of an interstate shipment contains a condition that the amount of any loss or damage for which the carrier is liable "shall be computed on the basis of the value of the property, being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid, at the place and time of shipment," it is proper for the judge to instruct the jury that if the carrier was liable, the plaintiff was entitled to recover the freight paid by him as a part of his damages.<sup>1</sup>

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1. *Carr v. Pennsylvania Rd. Co.* (N. J. 1916), 96 Atl. 588.

2005-EE. LIABILITY OF INITIAL CARRIER FOR SEIZURE OF GOODS BY MILITARY AUTHORITY AT THE INSTANCE OF THE CONNECTING CARRIER.

In *Chicago & E. I. Rd. Co. v. Collins Produce Co.*<sup>1</sup> the United States Supreme Court, per Mr. Justice Clarke, stated: "The common-law principle making the common carrier an insurer is justified by the purpose to prevent negligence or collusion between dishonest carriers or their servants and thieves or others, to the prejudice of the shipper, who is, of necessity, so remote from his property, when in transit, that proof of such collusion or negligence, when existing, would be difficult if not impossible. *Coggs v. Bernard*, 2 Ld. Raym. 909, 92 Eng. Reprint, 107; *Riley v. Horne*, 5 Bing. 210 Eng. Reprint, 1044, 2 Moore & P. 331, 30 Revised Rep. 576. The obligation to transport and to deliver is so exceptional and absolute in character that the relation of the carrier to the shipper was characterized in *New York C. Rd. Co. v. Lockwood*, 17 Wall. 357, 21 L. Ed. 527, 10 Am. Neg. Cas. 624, as so partaking of a fiduciary character as to require the utmost fairness and good faith on its part in dealing with the shipper and in the discharge of its duty to him; and so lately as *American Exp. Co. v. Mullins*,



212 U. S. 311, 53 L. Ed. 525, 29 Sup. Ct. Rep. 381, 15 Ann. Cas. 536, this court declared that if a carrier, by connivance or fraud, permitted a judgment to be rendered against it for property in its charge, such judgment could not be involved as a bar to a suit by a shipper.

"These decisions, a few from many, illustrate the character of the relation of trust and confidence which must be sustained between a common carrier and a shipper. It rests at bottom upon a commercial necessity and public policy which would be largely defeated if the carrier were permitted by false representations, or by representations which, though not intentionally false, were not known to be true, to procure the appropriation by military or other authority of property in its custody, as the jury found was done in this case, and thereby defeat its obligation to carry and deliver."

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1. *Chicago & E. I. Rd. Co. v. Collins Produce Co.* (1919), 249 U. S. 186, 39 Sup. Ct. Rep. 189, 63 L. Ed. 552, 555.

2005-FF. LIABILITY OF THE INITIAL CARRIER UNDER A THROUGH BILL OF LADING ON AN INTERSTATE SHIPMENT CANNOT BE ALTERED BY THE ISSUANCE OF A SECOND BILL OF LADING BY A CONNECTING CARRIER.

In *Missouri, K. & T. Ry. Co. of Texas v. Ward*<sup>1</sup> the United States Supreme Court, per Mr. Justice Brandeis, stated: "The purpose of the Carmack Amendment has been frequently considered by this court. It was to create in the initial carrier unity of responsibility for the transportation to destination. *Atlantic Coast Line R. Co. v. Riverside Mills*, 219 U. S. 186, 55 L. Ed. 167, 31 L. R. A. (N. S.) 7, 31 Sup. Ct. Rep. 164; *Northern P. R. Co. v. Wall*, 241 U. S. 87, 92, 60 L. Ed. 905, 907, 36 Sup. Ct. Rep. 493. And provisions in the bill of lading inconsistent with that liability are void. *Norfolk & W. R. Co. v. Dixie Tobacco Co.* 228 U. S. 593, 57 L. Ed. 980, 33 Sup. Ct. Rep. 609. While the receiving carrier is thus responsible for the whole carriage, each connecting road may still be sued for damages occurring on its line; and the liability of such participating carrier is fixed by the applicable valid terms of the original bill of lading. The bill of lading required to be issued by the initial carrier upon an interstate shipment governs the entire transportation. The terms of the original bill of lading were not altered by the second, issued by the connecting carrier. As appellants were already bound to transport the cattle at the rate and upon the terms named in the original bill of lading, the acceptance by the shipper of the second bill was without consideration and was void.

"The railway companies contend that while the Carmack Amendment makes the receiving carrier pay for all liability incurred by the connecting lines, the question of whether there is any such liability or not must be determined by references to the separate contracts of each participating carrier, and not to the contract of the initial carrier alone. If, as contended, a shipper must, in order to recover, first file his 'verified claim' with the connecting carrier who caused the injury, as provided in a separate bill of lading issued by such carrier, the shipper would still rest under the burden of determining which of the several successive carriers was at fault. Such a construction of the Carmack Amendment would defeat its purpose, which was to re-

lieve shippers of the difficult, and often impossible, task of determining on which of the several connecting lines the damage occurred. For the purpose of fixing the liability, the several carriers must be treated, not as independent contracting parties, but as one system; and the connecting lines become in effect mere agents, whose duty it is to forward the goods under the terms of the contract made by their principal, the initial carrier. *Atlantic Coast Line R. Co. v. Riverside Mills*, 219 U. S. 186, 206, 55 L. Ed. 167, 182, 31 L. R. A. (N. S.) 7, 31 Sup. Ct. Rep. 164; *Galveston, H. & S. A. R. Co. v. Wallace*, 223 U. S. 481, 491, 56 L. Ed. 516, 523, 32 Sup. Ct. Rep. 205.

"The railway companies also contend that the acceptance of the second bill of lading operated as a waiver of all rights thereafter accruing under the first. The record discloses no evidence of intention to make such a waiver and there was no consideration for it. Furthermore, as stated in *Georgia, F. & A. R. Co. v. Blish Mill Co.*, 241 U. S. 190, 197, 60 L. Ed. 948, 952, 36 Sup. Ct. Rep. 541, 'the parties could not waive the terms of the contract under which the shipment was made pursuant to the Federal Act. \* \* \* A different view would antagonize the plain policy of the act and open the door to the very abuses at which the act was aimed.'

"Judgment affirmed."

See "*Initial carrier not liable where the traffic is diverted by the connecting carrier to a point beyond that shown in the bill of lading and without the consent of the initial carrier,*" Section 2005-X, ante.

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1. *Missouri, K. & T. Ry. Co. of Texas v. Ward* (1917), 244 U. S. 383, 37 Sup. Ct. Rep. 617, 61 L. Ed. 1213, 1215.

#### 2005-GG. STATUS OF A SWITCHING CARRIER PERFORMING A SERVICE AS AGENT FOR THE INITIAL CARRIER.

Where a railroad company furnished the cars for an interstate shipment of stock and by its agent signed bills of lading, it is deemed the initial carrier, even though the cars after being loaded were transported by a belt line to the track of such railroad company.<sup>1</sup>

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1. *Utz v. Chicago, B. & Q. Rd. Co.* (Mo. 1918). 208 S. W. 640.

#### 2005-HH. WHEN THE LIABILITY OF THE INITIAL CARRIER CEASES.

Under the "Carmack Amendment" an initial carrier by rail is liable for all intermediate carriers, including an express carrier, at the end of the transit, until the goods are received at their destination, and the express carrier delivered as agent of initial carrier by rail.<sup>1</sup>

The liability as initial carrier of an interstate carrier of freight, which, by mistake of the consignor, carried the shipment to Woodruff, S. C., instead of Woodford, S. C., ended with delivery at Woodruff, where the consignor corrected the mistake.<sup>2</sup>

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1. *Vogel v. Delaware L. & W. Rd. Co.* (Wis. 1919), 171 N. W. 198.  
2. *Jeffcoat v. Atlantic C. L. Rd. Co.* (S. C. 1918), 96 S. E. 616.



2005-II. INITIAL CARRIER OF AN INTRASTATE SHIPMENT NOT LIABLE FOR DAMAGES SUSTAINED TO THE PROPERTY AFTER THE SAME IS RESHIPPED IN INTERSTATE COMMERCE UNDER A NEW BILL OF LADING.

In *Bracht v. San Antonio & A. P. Ry. Co.*<sup>1</sup> the opinion of the United States Supreme Court, delivered by Mr. Justice McReynolds, was as follows: "June 10, 1918, the petitioner delivered to respondent Railway Company at Ingleside, Texas, a carload of vegetables consigned to himself at Dallas, Texas, a point off its lines, where he intended to sell them. He accepted a bill of lading upon the face of which was plainly printed—'for use only between points within the state of Texas.' It contained no reference to a diversion of reshipment, and the record discloses no rule or regulation by the state statutes or authorities on that subject.

"The car moved over respondent's road to Waco, and then over the M. K. & T. Railway to Dallas, where it appears to have arrived promptly, with contents in good condition. Upon petitioner's request, made after such arrival, the M. K. & T. Railway forwarded the car to Kansas City over its own lines, took up the original bill of lading and issued an interstate one, acknowledging receipt of the vegetables at Dallas. When the car reached Kansas City the contents were in bad condition, and thereupon petitioner sued respondent as the initial carrier claiming a right to recover damages under the Carmack Amendment to the Interstate Commerce Act.

"The court below held that the provisions in interstate tariffs permitting reconsignment or change of destination did not apply; that the carrier only agreed to transport to Dallas, and was not liable for damage sustained beyond that point.

"Respondent's contract appears to have related only to a movement between points in the same state. It had no notice or reason to suppose that the freight would pass beyond the destination specified. The original undertaking was an intrastate transaction, subject, of course, to any applicable rules and regulations prescribed by state authority. The record discloses none; and we are unable to say, as matter of Federal law, that the tariff schedules for interstate shipments, or the provisions of the Interstate Commerce Act, constituted part of the agreement. The general principles announced in *Gulf, C. & S. F. R. Co. v. Texas*, 204 U. S. 403, 411, 51 L. Ed. 540, 545, 27 Sup. Ct. Rep. 360, are applicable. *Railroad Commission v. Worthington*, 225 U. S. 101, 56 L. Ed. 1004, 32 Sup. Ct. Rep. 653; *Texas & N. O. R. Co. v. Sabine Tram Co.*, 227 U. S. 111, 57 L. Ed. 442, 33 Sup. Ct. Rep. 229, and similar cases, are not controlling. They involved controversies concerning carriage between points in the same state which was really but part of an interstate or foreign movement reasonably to be anticipated by the contracting parties—a recognized step towards a destination outside the state. The distinctions are elucidated in *Texas & N. O. R. Co. v. Sabine Tram Co.* Here neither shipper nor respondent had in contemplation any movement beyond the point specified, and the contract between them must be determined from the original bill of lading and the local laws and regulations.

"Affirmed."

See "*Status of transportation within a State of traffic originating at a point without the State, or intended for ultimate delivery at a*

*point without the State, where the State movement is under a new bill of lading, or contract of shipment, and the traffic is not unloaded at the intermediate point.” Section 400-D, ante.*

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1. *Bracht v. San Antonio & A. P. Ry. Co.* (1921), 65 L. Ed. 173, —U. S.—, —Sup. Ct. Rep. —.

2005-JJ. AN ACTION AGAINST THE INITIAL CARRIER UNDER SECTION 20 OF THE ACT IS NOT ONE REDRESSIBLE UNDER SECTION 9 OF SUCH STATUTE.

In *Galveston H. & S. A. Ry. Co. v. Wallace*,<sup>1</sup> the United States Supreme Court, per Mr. Justice Lamar, stated: “The question as to whether the plaintiff was entitled to recover the value of the goods at Lowell, or, as provided in the bill of lading, at the point of shipment, is suggested in one of the briefs. No such issue was made in the lower court, nor is it referred to in any of the many assignments of error involving the construction and constitutionality of the Carmack amendment to the Hepburn bill of 1906, providing that where goods are received for shipment in interstate commerce, the initial carrier shall be liable for damages caused by itself or connecting carriers, and making void any contract of exemption against such liability. 34 Stat. at L. 584, chap 3591, U. S. Comp. Stat. Supp. 1909, p. 1149.

“1. The jurisdiction of the state court was attacked, first, on the ground that section 9 of the original act of 1887 provided that persons damaged by a *violation* of the statute ‘might make complaint before the Commission \* \* \* or in any district or circuit court of the United States.’ 24 Stat. at L. 379, chap. 104, U. S. Comp. Stat. 1901, p. 3154.

“It was contended that *Texas & P. R. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, 51 L. Ed. 553, 27 Sup. Ct. Rep. 350, 9 A. & E. Ann. Cas. 1075, ruled that this jurisdiction was exclusive, and from that it was argued that no suit could be maintained in a state court on any cause of action created either by the original act of 1887 or by the amendment of 1906. But damage caused by failure to deliver goods is in no way traceable to a violation of the statute, and is not, therefore, within the provisions of sections 8 and 9 of the act to regulate commerce. *Atlantic Coast Line R. Co. v. Riverside Mills*, 219 U. S. 208, 55 L. Ed. 179, 31 L. R. A. (N. S.) 7, 31 Sup. Ct. Rep. 164.”

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1. *Galveston H. & S. A. Ry. Co. v. Wallace* (1912), 223 U. S. 481, 32 Sup. Ct. Rep 205, 56 L. Ed. 516, 522.

2005-KK. INITIAL CARRIER’S LIABILITY IS NOT AFFECTED BY THE ACCEPTANCE OF INTERSTATE TRAFFIC ROUTED BY THE SHIPPER OVER A ROUTE NOT ORDINARILY USED BY THE CARRIER.

In *Norfolk & W. Ry. Co. v. Dixie Tobacco Co.*<sup>1</sup> the opinion of the United States Supreme Court, delivered by Mr. Justice Holmes, is as follows: “This is an action brought by the defendant in error to recover for damages to tobacco shipped by it on the railroad at Bedford City, Virginia, to Marshall, Texas. The plaintiff got a verdict and judgment, which was affirmed by the supreme court of appeals (111 Va. 813, 69 S. E. 1106), the case having been taken there on the



ground that the act of June 29, 1906 \* \* \* amending section 20 of the act to regulate commerce, of February 4, 1887, \* \* \* is unconstitutional. This section requires any common carrier receiving property for transportation from a point in one state to a point in another to issue a receipt or bill of lading for the same; makes the receiving carrier liable for loss caused by any common carrier *in transitu*; and provides that no contract shall exempt it from the liability thus imposed.

"The bill of lading stipulated that no carrier should be liable for damages not occurring on its portion of the through route. There was evidence that the tobacco was damaged after it left the railroad company's hands; and the defendant asked an instruction that if the jury believe that it delivered the tobacco in good order to the next carrier the verdict should be in its favor. This instruction was refused and the defendant excepted. There was evidence also that the plaintiff chose the route for the tobacco, being partly by sea, and a different one from that which the railroad would have adopted, which would have been all rail. The railroad had no through route or rate established with the line of steamers by which the tobacco went. Instructions were asked and refused, subject to exception, that the bill of lading controlled, and that the above statute, so far as it attempts to invalidate limitations or liabilities like that quoted above, is void.

"The supreme Court of appeals followed the ruling in *Atlantic Coast Line R. Co. v. Riverside Mills*, 219 U. S. 186, 55 L. Ed. 167, 31 L. R. A. (N. S.) 7, 31 Sup. Ct. Rep. 164 (to which may be added *Galveston H. & S. A. R. Co. v. Wallace*, 223 U. S. 481, 56 L. Ed. 516, 32 Sup. Ct. Rep. 205), as conclusive. The plaintiff in error contends that these cases may be distinguished on the ground that in both of them it was to be presumed that the carrier was a voluntary party to a through route and rate, whereas here the stipulation against liability beyond its line, and the fact that it had no through route with the steamship company, exclude that presumption. It argues that as it was bound to accept goods destined beyond its line for delivery to the next carrier, and was required by the statute to give a through billing of lading. If, on such compulsory acceptance, it is made answerable for damages done by others, its property is taken without due process of law. But in the former case there was the same stipulation in the bill of lading, and the supposed through routes were only presumed. In the second case the carrier is spoken of as voluntarily accepting goods for a point beyond its line; but there, too, there was the same attempt to limit liability, and in the present case the acceptance was voluntary in the same degree as in that. There is no substantial distinction between the earlier decisions and this. Judgment affirmed."

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1. *Norfolk & W. Ry. Co. v. Dixie Tobacco Co.* (1913), 228 U. S. 593, 57 L. Ed. 980, 981, 33 Sup. Ct. Rep. 609.

#### 2005-LL. MEANING OF THE TERM "LAWFUL HOLDER" OF THE BILL OF LADING.

In *Pennsylvania Rd. Co. v. Olivit Bros.*<sup>1</sup> the United States Supreme Court, per Mr. Justice McKenna, stated: "The first question involves the Carmack Amendment; and, considering it, the court of errors

and appeals decided that 'any lawful holder of a bill of lading issued by the initial carrier pursuant to the Carmack Amendment \* \* \* upon receiving property for interstate transportation, may maintain an action for any loss, damage, or injury to such property caused by any connecting carrier to whom the goods are delivered.' (88 N. J. L. 235, 96 Atl. 588.) Citing *Adams Exp. Co. v. Croninger*, 226 U. S. 491, 57 L. Ed. 314, 44 L. R. A. (N. S.) 257, 33 Sup. Ct. Rep. 148.

"We are not prepared to say that a contest of this view is frivolous, and the motion to dismiss is denied. Besides, it is contended that the shipments having been in interstate commerce, they are subject to and governed by the Interstate Commerce Act.

"Coming to the merits of the question, however, we concur with the court of errors and appeals in its construction of the Carmack Amendment. It provides: 'That any common carrier \* \* \* receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor and shall be liable to the *lawful holder* thereof for any loss, damage, or injury to such property caused by it \* \* \*.'

"The crucial words are 'lawful holder.' Defendant contends that they mean 'the owner or someone shown to be duly authorized to act for him in a way that would render any judgment recovered in such an action against the carrier *res adjudicata* in any other action.' And section 8 of the Interstate Commerce Act is referred to as fortifying such views. It provides that 'such common carrier shall be liable to the person or persons injured' in consequence of any violations of the act.

"To accept this view would make section 8 contradict the Carmack Amendment (section 20), it having only a general purpose, whereas the purpose of the amendment is special and definitely expresses the lawful holder of the bill of lading to be the person to whom the carrier shall be liable 'for any loss, damage, or injury' to property caused by it. *Adams Exp. Co. v. Croninger, supra.*"

Section 42 of the Federal Bill of Lading Act contains the following definition:<sup>2</sup>

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

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1. *Pennsylvania Rd. Co. v. Olivit Bros.* (1917), 243 U. S. 574, 37 Sup. Ct. Rep. 468, 61 L. Ed. 908, 912; *Pennsylvania Rd. Co. v. Carr* (1917), 243 U. S. 587, 37 Sup. Ct. Rep. 472, 61 L. Ed. 914.
  2. Federal Bill of Lading Act, approved August 29, 1916. (39 Stat. L. 538.)

## 2005-MM. SECTION 20 OF THE ACT NOT APPLICABLE TO TRAFFIC FROM POINTS IN AN ADJACENT FOREIGN COUNTRY TO POINTS IN THE UNITED STATES.

The "Cummins Amendment" to the Interstate Commerce Act does not relate to traffic moving from points in an adjacent foreign country to points in the United States.<sup>1</sup>

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1. Heated Car Service Regulations (1918), 50 I. C. C. Rep. 620, 623.



**2006. Limited-liability provisions of Section 20 of the Act governing the transportation of live stock.**

**2006-A. GENERAL APPLICATION OF LIMITED-LIABILITY PROVISIONS TO LIVE STOCK.**

By the terms of the proviso of Section 20 (11) of the Interstate Commerce Act, the provisions thereof respecting liability of the initial carrier for the full actual loss, damage, or injury notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, does not apply to "ordinary live stock."

Section 20 (11) of the Act provides that the term "ordinary live stock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses.

As to such live stock as are chiefly valuable for breeding, racing, show purposes, or other special uses, and which are not comprehended within the definition of "ordinary live stock," the carrier may maintain rates dependent upon a declared value as authorized or required by the Interstate Commerce Commission.

The maintenance by carriers of rates on *ordinary live stock* in terms of value subsequent to the amendment of the Act by the "Cummins Amendment" of August 9, 1916, was unlawful.<sup>1</sup> In view of the "Cummins Amendment" referred to, the Commission cannot authorize or sanction rates on ordinary live stock which are dependent upon value.<sup>2</sup>

In *In the Matter of Express Rates, Practices, Accounts, and Revenues*,<sup>3</sup> the Commission stated: "Respecting ordinary live stock as the term is defined in the amendment of August 9, 1916, it is urged by protestants that the maintenance of different rates for animals of the same class, according to the value of each, is by the amendment prohibited, and in support thereof they direct attention to the following expression in the report of the Senate Committee on Interstate Commerce which accompanied the bill:

"With respect to ordinary live stock as defined in the bill, there can be no rate dependent either upon agreed or released value, and in the event of loss or damage, the carrier must respond for the actual value of the property. The carrier will be permitted to make such rate on ordinary live stock as will compensate for the service, including liability, but the rate cannot vary according to the value of each animal that may be loaded into a car. There will remain the right on the part of the carrier to classify different kinds of animals within the definition of ordinary live stock, but when so classified there can be no lawful variance in rates because one carload of such animals may be more valuable than another."

"They contend that rates for the transportation of ordinary live stock should be stated in cents per 100 pounds without reference to the value.

"Petitioners do not propose rates for the transportation of ordinary live stock dependent upon agreed or released value. They say that they have the right to maintain existing rates which are dependent upon the actual value of the live stock; and for the transportation of live stock, except that which is chiefly valuable for breeding, racing, show purposes, or other special uses, they apparently plan to continue

their present rates. By way of illustration, the rates now applicable to shipments of horses are predicated upon a maximum value of \$200 per head. If the value exceeds that sum an additional charge is made for the excess value, which charge varies with the distance the shipment moves.

“The purpose of the amendment of August 9, 1916, as stated in the report of the Senate Committee on Interstate Commerce, was—

“to restore the law of full liability as it existed prior to the Carmack amendment of 1906, so that when property is lost or damaged in the course of transportation under such circumstances as to make the carrier liable recovery is had for full value or on the basis of full value.”

“It is clearly the purpose of the Cummins amendment, as amended, to invalidate all limitations of liability for loss, damage, or injury to ordinary live stock caused by the initial carrier or by another carrier to which shipment may be delivered or which may participate in transporting it, notwithstanding any representation or agreement or release as to value. While it does not appear to be the purpose of petitioners to attempt a limitation of liability, a continuance of the present method of stating rates for ordinary live stock would require a representation of the value, which is declared to be unlawful.

“The act, as amended, fixes upon the carrier liability for the full actual loss, damage, or injury caused by it to ordinary live stock and invalidates any limitation or attempted limitation of that liability, wherever or in whatever form it is found. Ordinary live stock is excepted from the property as to which we are empowered to authorize or require the establishment of rates dependent upon declared or released value. If rates on ordinary live stock dependent upon declared value could lawfully be maintained without authorization by the Commission there might and probably would be instances in which conflict would arise as between the liability imposed by the act upon the carrier and the prohibitions of section 10 of the act affecting shippers. We cannot, in view of the provisions of the law authorize or sanction such rates upon ordinary live stock; neither can they lawfully be maintained upon any other character of traffic except under authorization duly granted by the Commission. Under such authority both shipper and carrier are fully protected and the full spirit of the law is observed.

“The shipper or lawful holder of the receipt or bill of lading for ordinary live stock should be free to press his claim for recovery in full for loss, damage, or injury caused by the carrier, and rates for the transportation of such live stock may not be stated in a manner to require a representation of the value. This is not saying that value may not be considered and duly weighed as an element in determining what reasonable rates shall be established.

“As to live stock the order herein will apply only to that which is chiefly valuable for breeding, racing, show purposes, or other special uses.

“An order will be entered authorizing the maintenance of existing express rates dependent upon the declared or released value of the property transported, except ordinary live stock, also authorizing the form of express receipt to be used.”

In *Williams Co. v. Hartford & N. Y. Transportation Co.*<sup>4</sup> the Commission stated: “Under the Act, as now amended, we cannot fairly or effectively differentiate between released rates and rates based on



actual value, for the reason that the carriers can have no knowledge of the actual value except as declared by the shipper. In view of the fact that the rates assailed require a declaration of value by the shipper, and were published without our authority, we are of the opinion that they are unlawful."

A shipping receipt binding the shipper to attend to the unloading, feeding and watering of live stock and to assume the risks incident thereto, is rendered void by the "Carmack Amendment."<sup>5</sup>

In a suit for injury to live stock in interstate commerce, the Interstate Commerce Act and the decisions thereunder control as to the carrier's liability.<sup>6</sup>

1. *Wilson & Co. v. Chicago, M. & St. P. Ry. Co.* (1918), 50 I. C. C. Rep. 126, 129.
2. *Live Stock Classification* (1917), 47 I. C. C. Rep. 335, 344. For the validity of valuation rates on live stock prior to the passage of the second Cummins Amendment of August 9, 1916, see *National Society of Record Associations v. Aberdeen & R. Rd. Co.* (1916), 40 I. C. C. Rep. 347; *Cincinnati, N. O. & T. R. Ry. Co. v. Rankin* (Ky. 1913), 156 S. W. 400, 402; *Southern Ry. Co. v. Bynum* (Ala. 1915), 69 So. 820, 821; *Shay v. Union P. Rd. Co.* (Utah 1915), 153 Pac. 31; *Donovan v. Wells Fargo & Co.* (Mo. 1915), 177 S. W. 839; *Missouri P. Ry. Co. v. Harper Bros.* (1912), 201 Fed. Rep. 671; *Con. Rul. Bul.*, Rule 496, (July 3, 1916).
3. *In the Matter of Express Rates, Practices, Accounts, and Revenues* (1917), 43 I. C. C. Rep. 510, 512, et seq. cited in, *Williams Co. v. Hartford & N. Y. Transportation Co.* (1918), 48 I. C. C. Rep. 269, 273.
4. *Williams Co. v. Hartford & N. Y. Transportation Co.* (1918), 48 I. C. C. Rep. 269, 274.
5. *Chicago, R. I. & G. Ry. Co. v. Linger* (Tex. 1913), 156 S. W. 298.
6. *Atchison, T. & S. F. Ry. Co. v. Ward* (Tex. 1913), 159 S. W. 375, 379.

2006-B. SECTION 20 OF THE ACT SUPERSEDES THE COMMON-LAW RULE REGARDING LIABILITY OF THE CARRIER FOR NEGLIGENT DELAY IN THE TRANSPORTATION OF LIVE STOCK.

The Act of Congress, known as the "Hepburn Act," imposing liability upon the initial carrier, when engaged in interstate commerce, "for any loss, damage or injury" to an interstate shipment "caused by it or by any common carrier, railroad, or transportation company, to which such property may be delivered, or over whose lines it may pass," supersedes the common-law rule regarding negligent delay in the transportation of live stock; and its provisions may be invoked, when the proof shows its applicability, though not averred in any pleading filed in the case.<sup>1</sup>

Where an action against a carrier for negligent delay in an interstate shipment of live stock, it is shown that the shipment was under a special written contract, signed by the shipper and based upon a reduced rate, made in consequence of the terms of such contract, and that such rate had been published and filed with the Interstate Commerce Commission, in accordance with the Federal Laws and the regulations of such Commission. *HELD*, That in the absence of proof of such fraud oppression, attempted rebating, or unlawful billing, as would avoid the contract, that the terms of such contract governed the liability of the carrier, and that the failure of the shipper to comply with certain provisions thereof where such provisions are not shown to be unreasonable in the particular case, will avoid the liability of the carrier.<sup>2</sup>

1. *Karr v. Baltimore & O. Rd. Co.* (W. Va. 1915), 86 S. E. 43.
2. *St. Louis & S. F. Rd. Co. v. Taliaferro* (Okla. 1916), 156 Pac. 359.

2006-C. LIABILITY OF CARRIER FOR LOSS OF LIVE STOCK TRANSPORTED TO A FAIR OR EXPOSITION FOR EXHIBITION THEREAT AT FULL TARIFF RATE AND RETURNED BY CARRIER FREE OF CHARGE.

Where an interstate carrier issued a circular and published a general order providing that all shipments of hogs intended for exhibition at fairs and expositions should be carried thereto at the full tariff rates, but that, if returned in 30 days, they should be returned free from further freight charges, on presentation of the paid freight bill showing that the shipment moved over the carrier's lines on the first movement, and of a certificate from the proper officers of the fair, showing that the hogs had been regularly exhibited and had not changed ownership, and thereafter a hog was shipped to a fair on the carrier's line, for the purpose of exhibition, and the shipper complied in all respects with this order, and the carrier accepted the hog for return shipment in accordance with the agreement to return it free from further freight charges, and, while in course of transportation, the hog received injuries which caused its death, the shipper, if the injuries resulted from negligence of the carrier, was not bound by an arbitrary prearranged valuation upon such property, printed in a bill of lading issued to him, acknowledging receipt of the hog for return shipment free of additional freight charges, and he was entitled to recover full damages for the loss sustained by him by reason of such negligence.<sup>1</sup>

A mere general limitation in a bill of lading as to value of property shipped amounting to no more than an arbitrary preadjustment of value, will not serve to exempt the carrier from liability for the true value, if the property be destroyed by negligence of the carrier.<sup>2</sup>

1. De Bow v. Vicksburgh S. & P. Ry. Co. (Ga. 1918), 95 S. E. 261.

2. Ibid; Central of Ga. Ry. Co. v. Hall, 124 Ga. 322, 52 S. E. 679.

2006-D. VALIDITY OF LIMITED-LIABILITY PROVISIONS IN RECEIPTS, BILLS OF LADING, AND CONTRACTS OF SHIPMENT IN INTERSTATE AND FOREIGN COMMERCE.

See "*Validity of limited-liability provisions in receipts, bills of lading, and contracts of shipment in interstate and foreign commerce,*" Section 2016, *post*.

2006-E. VALIDITY OF LIMITED-LIABILITY PROVISIONS IN CLASSIFICATIONS AND TARIFFS OR RATE SCHEDULES.

See "*Validity of limited-liability provisions in classifications and tariffs or rate schedules,*" Section 2017, *post*.

2007. Limited-liability provisions of Section 20 of the Act not applicable to the carriage of baggage.

2007-A. BAGGAGE CARRIED ON PASSENGER TRAINS OR BOATS IS NOT GOVERNED BY THE LIMITED-LIABILITY PROVISIONS OF THE ACT.

Section 20 (11) of the Interstate Commerce Act, (*as amended August 9, 1916*), contains the following proviso:

That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers;



2007-B. LIMITATION OF LIABILITY ON BAGGAGE MUST BE SHOWN IN PUBLISHED TARIFFS FILED WITH THE INTERSTATE COMMERCE COMMISSION.

A limitation as to the baggage liability of an interstate carrier, based upon the requirement to declare its value when more than \$100 and pay an excess charge, is a regulation determinative of the rate to be charged and affecting the service to be rendered to the passenger within the meaning of the Act to Regulate Commerce, which requires regulations of that character to be filed and posted in accordance with its provisions as a part of the carrier's tariff schedules.<sup>1</sup>

In *Boston & M. Rd. Co. v. Hooker*,<sup>2</sup> the United States Supreme Court, per Mr. Justice Day, stated: "It is to be observed that the schedules are required to state, among other things, in naming certain charges, 'all other charges which the Commission may require, all privileges or facilities granted or allowed, and any rules or regulations which in anywise change, alter, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee.' The question then is, did the limitation as to liability for baggage based upon the requirement to declare its value when more than \$100 was to be recovered, come within that provision?

"It seems to us that the ordinary signification of the terms used in the act would cover such requirements as are here made for the amount of recovery for baggage lost by the carrier. It is a regulation which fixes and determines the amount to be charged for the carriage in view of the responsibility assumed, and it also affects the value of the service rendered to the passenger. Such requirements are spoken of, in decisions dealing with them, as regulations; as, a common carrier 'may prescribe *regulations* to protect himself against imposition and fraud, and fix a rate of charges proportionate to the magnitude of the risks he may have to encounter.' *York Mfg. Co. v. Illinois C. R. R. Co.*, 3 Wall. 107, 112, 18 L. Ed. 170, 171. 'It is undoubtedly competent for carriers of passengers, by specific *regulations*, distinctly brought to the knowledge of the passenger, which are reasonable in their character, and not inconsistent with any statute or their duties to the public, to protect themselves against liability, as insurers, for baggage exceeding a fixed amount in value, except upon additional compensation proportioned to the risk. And in order that such *regulations* may be practically effective and the carrier advised of the full extent of its responsibility, and, consequently, of the degree of precaution necessary upon its part, it may rightfully require, as a condition precedent to any contract for the transportation of baggage, information from the passenger as to its value; and if the value thus disclosed exceeds that which the passenger may reasonably demand to be transported as baggage without extra compensation the carrier, at its option, can make such additional charges as the risk fairly justifies.' *New York C. & H. R. R. Co. v. Fraloff*, 100 U. S. 24, 25 L. Ed. 531, 533.

"Mr. Justice Brewer, sitting in the Circuit Court, in *Ames v. Union P. R. Co.*, 64 Fed. 165, 178, thus defined the term 'regulation:' 'Within the term "regulation" are embraced two ideas; one is the mere control of the operation of the roads, prescribing the rules for the management thereof—matters which affect the convenience of the public in their use. Regulation, in this sense, may be considered as

purely public in its character, and in no manner trespassing upon the rights of the owners of railroad. But within the scope of the word "regulation" as commonly used, is embraced the idea of fixing the compensation which the owners of railroad property shall receive for the use thereof; and when regulation in this sense is attempted, it necessarily affects the property interests of the railroad owners; and it is "regulation" in this sense of the term.'

"Turning to the act itself we think the conclusion that this limitation is a regulation required to be filed by the act is strengthened by section 22, which provides: 'But before any common carrier, subject to the provisions of this act, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, *together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section 6 of this act.*' This section would indicate that Congress thought that section 6 of the act had to do with specifications of the amount of baggage which would be carried free, and that such regulations should be filed under the requirement of section 6 to which it referred.

"This conclusion is further strengthened by the action of the Interstate Commerce Commission, in requiring by its Tariff Circular No. 15-A, entitled, 'Regulations Governing the Construction and Filing of Freight Tariffs and Classification and Passenger Fare Schedules,' effective April 15, 1908, and in force at the time of the loss here in question, that:

" '34. Tariffs shall contain, in the order named:

" '(g) Rules and regulations which govern the tariff, the title of each rule or regulation to be shown in bold type. Under this head all of the rules, regulations, or conditions which in any way affect the fares named in the tariff shall be entered \* \* \* These rules shall include \* \* \* the general baggage regulations, and also schedule of excess-baggage rates, unless such excessive-baggage rates are shown in tariff in connection with the fares.'

"This requirement is a practical interpretation of the law by the administrative body having the enforcement in charge, and is entitled to weight in construing the act.

"The act of June 18, 1910, defining, in section 1, the duties of carriers to make just and reasonable regulations affecting, among other things, the carrying of personal, sample, and excess baggage, may be noted in passing. This statute was before the Commission in a case involving such regulations. *Regulations Restricting the Dimensions of Baggage*, 26 Inters. Com. Rep. 292. Concerning it the Commission, by Clark, Chairman, said:

" 'Prior to June 18, 1910, the act to regulate commerce contained no specific provision relating to the interstate transportation of baggage, except in connection with the issuance of joint interchangeable mileage tickets. The Commission had, however, under authority of section 6, required carriers to publish and file their general baggage regulations and their schedules of excess baggage rates. Section 1 was



amended on the date named, the amendment, insofar as it is material, reading as follows:

“ “It is hereby made the duty of all common carriers subject to the provisions of this act to reestablish, observe, and enforce \* \* \* just and reasonable regulations and practices affecting classifications \* \* \* the manner and method of presenting, marking, packing and delivering property for transportation, the facilities for transportation \* \* \* the carrying of personal, sample, and excess baggage.” ”

“And it is to be observed that the Commission considers its requirement with reference to including baggage regulations in the tariff schedules, quoted above, as adequate, for the same provisions appear in its current circular.

“We are therefore of the opinion that the requirement published concerning the amount of the liability of the defendant, based upon additional payment where baggage was declared to exceed \$100 in value, was determinative of the rate to be charged, and did affect the service to be rendered to the passenger, as it fixed the price to be paid for the service rendered in the particular case, and was, therefore, a regulation within the meaning of the statute.”

Insufficiency or defective certification of a carrier's applicable tariff schedules on file with the Interstate Commerce Commission, which were admitted in evidence by the Trial Court, could not justify a State Appellate Court in arbitrarily disregarding such schedules when passing upon the question whether or not the carrier had limited its liability for the baggage of an interstate passenger to a specified sum unless a greater value is declared and excess charges paid.<sup>3</sup>

1. *Boston & M. Rd. Co. v. Hooker* (1914), 233 U. S. 97, 58 L. Ed. 868, 34 Sup. Ct. Rep. 526.

2. *Ibid.*

3. *New York C. & H. R. Rd. Co. v. Beaham* (1916), 242 U. S. 148, 37 Sup. Ct. Rep. 43, 61 L. Ed. 210.

#### 2007-C. EFFECT OF BAGGAGE-LIABILITY PROVISIONS OF A PUBLISHED TARIFF.

In *Boston & M. Rd. Co. v. Hooker*,<sup>1</sup> the United States Supreme Court, per Mr. Justice Day, stated: “By permitting the baggage regulation including the excess valuation rate, to be filed and become part of the tariff schedules, the rule of the common law that the carrier becomes an insurer of the safety of baggage against accidents not the act of God or the public enemy or the fault of the passenger was not changed. The effect of such filing is to permit the carrier by such regulations to obtain commensurate compensation for the responsibility assumed for the safety of the passenger's baggage, and to require the passenger, whose knowledge of the character and value of his baggage is peculiarly his own, to declare its value and pay for the excess amount. There is no question of the reasonableness or propriety of making such regulations, which would be binding upon the passenger if brought to his knowledge in such wise, as to make an agreement or what is tantamount thereto. This much is conceded by the learned counsel for the plaintiff in error. The liability of a carrier under the Interstate Commerce Act was said, in the *Croninger Case* to be (aside from the responsibility for the default of a connecting carrier) ‘not beyond the liability imposed by the common law, as that body of law applicable to

carriers has been interpreted by this Court as well as many Courts of the states.' And in that case it was laid down as the established rule of common law 'as declared by this Court in many cases that such a carrier may be a fair, open, just, and reasonable agreement limit the amount recoverable by a shipper in case of loss or damage to an agreed value made for the purpose of obtaining the lower of two or more rates of charges proportionate to the amount of the risk.' And see the previous cases in this Court there cited. But the effect of the regulations, filed as required, giving notice of rates based upon values then the baggage to be transferred was of a higher value than \$100, and the delivery and acceptance of the baggage without declaration of value or notice to the carrier of such higher value, charges the carrier with liability to the extent of \$100 only.

"The language of the regulation filed reads: Baggage liability is limited to personal baggage not to exceed \$100 in value, etc., unless a greater value is declared, etc. We have said that this limitation does not relieve from the insurer's liability when the loss occurs otherwise than by negligence, and we think applies equally when negligence of the carrier is the cause of loss, as is found in this case. The effect of the filing gives the regulation as to baggage the force of a contract 'determining' baggage liability. In *Hart v. Pennsylvania R. Co.* 112 U. S. 331, 28 L. Ed. 717, 5 Sup. Ct. Rep. 151, followed in the later cases in this court, it was held that a recovery may not be had above the amount stipulated though the loss results from the carrier's negligence. 'The carrier must respond for negligence up to that value.' The discussion and conclusion reached in the *Croninger* and *Carl Cases*, leave nothing to be said on this point. This rule is recognized in New York (*Tewer v. North German Lloyd S. S. Co.*, 186 N. Y. 151, 8 L. R. A. (N. S.) 199, 78 N. E. 864, 9 Ann. Cas. 909, 20 Am. Neg. Rep. 701; *Gardiner v. New York C. & H. R. R. Co.*, 201 N. Y. 387, 34 L. R. A. (N. S.) 826, 94 N. E. 876, Ann. Cas. 1912B, 281).

"If the charge filed were reasonable, the only attack that could be made upon such regulation would be by proceedings contesting their reasonableness before the Interstate Commerce Commission. While they were in force they were equally binding upon the railroad company and all passengers whose baggage was transported by carriers in interstate commerce. This being the fact, we think the limitation of liability to \$100 fixed the amount which the plaintiff could recover in this case, and there was error in affirming the recovery for the full value of the baggage, in the absence of a declaration of such value and payment of the additional amount required to secure liability in the greater sum."

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1. *Boston & M. Rd. Co. v. Hooker* (1914), 233 U. S. 97, 34 Sup. Ct. Rep. 526, 58 L. Ed. 868, 879.

#### 2007-D. RECEIPT OF CARRIER FOR BAGGAGE OF PASSENGER.

A railway carrier receiving a passenger's baggage for interstate transportation is not required to give any other receipt than the customary baggage check by the provisions of the Interstate Commerce Act, Section 20, as amended by the "Carmack Amendment" of June 29, 1906, that a railway company receiving property for transportation in interstate commerce shall issue a receipt or bill of lading therefor.<sup>1</sup>



In *Boston & M. Rd. Co. v. Hooker*<sup>2</sup> Mr. Justice Day, in delivering the opinion of the United States Supreme Court, stated: "We do not think the requirement of the Carmack Amendment, that a railway company receiving property for transportation in interstate commerce shall issue a receipt or bill of lading therefor, required other receipt than baggage checks, which it is shown were issued, when the baggage was received in this case. When the amendment was passed Congress well knew that baggage was not carried upon bills of lading, and that carriers had been accustomed to issue checks upon receipt of baggage. We do not think it was intended to require a departure from this practice when the matter was placed under regulation by schedules filed and subject to change for unreasonableness upon application to the Commission. Such checks are receipts and there is no special requirement in the statute as to their form. It is doubtless in the power of the Interstate Commerce Commission to make requirements as to the checks or receipts to be given for baggage if that subject needs regulation."

1. *Boston & M. Rd. Co. v. Hooker* (1914), 233 U. S. 97, 34 Sup. Ct. Rep. 526, 58 L. Ed. 868, 879.

2. *Ibid.*

2007-E. MEASURE OF RIGHTS AND LIABILITIES OF PASSENGER AND CARRIER  
IN CASE OF LOSS OF BAGGAGE IN INTERSTATE TRANSPORTATION.

The rights and liabilities of an interstate passenger and a carrier in case of loss or damage depend upon Federal legislation, the agreement between the parties and common law principles, as accepted and enforced in Federal tribunal.<sup>1</sup>

1. *New York C. & H. R. Rd. Co. v. Beaham* (1916), 242 U. S. 148, 37 Sup. Ct. Rep. 43, 61 L. Ed. 210.

2007-F. A PASSENGER IS BOUND BY TARIFF PROVISIONS LIMITING THE CARRIER'S LIABILITY FOR LOSS OR DAMAGE TO BAGGAGE IN INTERSTATE TRANSPORTATION.

In *New York C. & H. R. Rd. Co. v. Beaham*<sup>1</sup> the United States Supreme Court, per Mr. Justice McReynolds, stated: "And the carrier is entitled to the presumption that its business is being conducted lawfully. *Southern Exp. Co. v. Byers*, 240 U. S. 612, 614, 60 L. Ed. 825, 827, L. R. A. 1817A, 197, 36 Sup. Ct. Rep. 410; *Cincinnati, N. O. & T. P. R. Co. v. Rankin*, 241 U. S. 319, 326, 60 L. Ed. 1022, 1025, L. R. A. 1917A, 265, 36 Sup. Ct. Rep. 555. In the circumstances disclosed, acceptance and use of the ticket sufficed to establish an agreement *prima facie* valid which limited the carrier's liability. Mere failure by the passenger to read matter plainly placed before her could not overcome the presumption of assent. *New York, C. & H. R. R. Co. v. Fraloff*, 100 U. S. 24, 27, 25 L. Ed. 531, 533; *The Kensington*, 183 U. S. 263, 46 L. Ed. 190, 22 Sup. Ct. Rep. 102; *Fonseca v. Cunard S. S. Co.*, 153 Mass. 553, 12 L. R. A. 340, 25 Am. St. Rep. 660, 27 N. E. 665.

"In order to determine the liability assumed for baggage it was proper to consider applicable tariff schedules on file with the Interstate Commerce Commission; and the carrier had a Federal right not only to a fair opportunity to put these in evidence, but also that, when

before the court, they should be given due consideration. *Southern Exp. Co. v. Byers*, 240 U. S. 614, 60 L. Ed. 827, L. R. A. 1917A, 197, 36 Sup. Ct. Rep. 410; *Kansas City Southern R. Co. v. Jones*, 241 U. S. 181, 60 L. Ed. 943, 36 Sup. Ct. Rep. 513. After their admission in evidence by the trial court the schedules could not be disregarded arbitrarily without denying the railroad's Federal right; and we think they were so treated by the court of appeals. We are cited to no decision of the supreme court of Missouri recognizing any settled rule of practice there which required such action, and the unjust consequences of it are apparent. Assuming, without deciding, the correctness of its opinion that the schedules as certified were inadmissible and improperly received, nevertheless the court should not have destroyed the carrier's opportunity to protect himself by introducing other evidence upon a new trial.

"Reverse and remand for further proceedings not inconsistent with this opinion. Reversed."

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1. *New York C. & H. R. Rd. Co. v. Beaham* (1916), 242 U. S. 148, 37 Sup. Ct. Rep. 43, 61 L. Ed. 210, 216.

## 2008. Limitation of common carrier's liability in the transportation of perishable traffic.

### 2008-A. NATURE AND EXTENT OF PROTECTIVE SERVICES IN THE TRANSPORTATION OF PERISHABLE TRAFFIC.

See "*Protective Services in the Transportation of Perishable Traffic*," Chapter 12, ante.

### 2008-B. RELATIVE LIABILITY OF CARRIER FOR LOSS OR DAMAGE TO PERISHABLE TRAFFIC MOVING UNDER "CARRIER'S PROTECTIVE SERVICE," AND "SHIPPER'S PROTECTIVE SERVICE."

In *Perishable Freight Investigation*<sup>1</sup> the Commission stated: "The proposed tariff contains numerous provisions, scattered throughout both the general and the special rules and regulations, defining or seeking to limit the carrier's liability. Both the propriety and lawfulness of these provisions have been questioned.

"Item 20 (d) is to the effect that:

"Nothing in this tariff shall be construed as relieving carriers from such liability as may rest upon them for loss or damage when same is the result of carrier's negligence.

"Rule 130 is as follows:

"Carriers furnishing protective services as provided herein do not undertake to overcome the natural characteristics of perishable goods nor the inherent tendency of such goods to deteriorate or decay, or do the carriers assume any liability for loss or damage resulting therefrom.

"Numerous other provisions state similar limitations of liability, require releases from the shipper under certain conditions or, in some instances, define the shipper's liability. These declarations are predicated upon the special hazard resulting from the perishable nature of the freight, or from the exercise by the shipper of some measure of control over the form or degree of protective service accorded.



"At common law a common carrier is liable for any loss and damage, except that arising from act of God, the public enemy, the act of the shipper, operation of law, or the inherent vice or nature of the goods transported. But under the common law this liability except for negligence or misconduct, can by contract be limited, and it has in the past been the general practice of carriers to effect such limitation, usually by limitations of common-law liability in respect of ordinary live stock are now prohibited in interstate rail traffic by the Cummins amendment to the act to regulate commerce, and with respect to other commodities they are lawful, under this amendment, only to the extent that by our order a carrier may be expressly authorized or required to establish and maintain rates dependent upon values declared or agreed upon in writing by the shipper. The subject was fully discussed in our report in *In the Matter of Bills of Lading*, 52 I. C. C., 671.

"While limitations of the carrier's common law liability are thus prohibited, except to the extent prescribed by the act, this liability, as we have seen, does not extend to loss or damage caused by the act of the shipper. If the latter directs in some measure the extent or character of the service and damage results which may be ascribed to his directions, we think that the carrier cannot be held liable. This may be illustrated by refrigeration service. If the shipper should undertake, as he would under section 4 of the proposed tariff, to control the amount of ice to be used initially or for re-icing, it is difficult to believe that a carrier, following the instructions given by the shipper, could be held responsible for harm resulting from inadequacy of the ice supplied. The optional Shipper's Protective Service under section 5 is a similar illustration.

"For this reason many of the declarations in the tariff which deal with this matter of liability state with approximate accuracy what we believe to be the law. But such declarations can have no controlling effect, for the carrier's liability for loss or damage is determined by the law. Nothing can be added to or subtracted from the law by limitations or definitions stated in tariffs, and this was admitted by counsel for the Director General. There is the constant risk, therefore, if such declarations are included, of misstating the law and misleading the parties to no good purpose.

"Counsel for the Director General deny any purpose of limiting liability in contravention of law by the incorporation of these provisions in the tariff. They urge that none of them is inconsistent with the law or public policy; that they are of advantage in giving shippers notice and warning in advance of shipment; and that the only alternative would be to rely upon notations written on bills of lading. While they claim that carriers may lawfully make such notations, they suggest that the practice might give rise to discrimination and entail delays in the movement of traffic. They therefore urge the incorporation of the provisions in question as a matter of expediency and for the information of shippers.

"During the course of the proceedings in *In the Matter of Bills of Lading*, *supra*, representatives of some of the shippers of perishable products advocated that a special form of bill of lading be prescribed for such traffic, but we thought that unnecessary.

"In our opinion tariff provisions which purport to state the law, fix limitations of the carriers' liability, or define the legal obligations of the parties are, for the reasons heretofore indicated, generally objectionable. As respects the instant case, there is force in counsel's contention that some warning to shippers is desirable and we doubt whether it is advisable to eliminate all such provisions. In place of the declarations of this kind, however, which appear so frequently in both the general and special rules and which are likely to be misleading, we think there should be substituted in Section 1 certain well-considered statements embodying the principles upon which all these numerous declarations are based, so far as they have validity.

"Item 20 (d), above quoted, is objectionable, because a carrier may be liable under the common law for loss or damage which is not the result of its negligence, and this item implies that there may be something in the tariff which seeks to limit such liability. In the following form the objection would be removed:

"Nothing in this tariff shall be construed as relieving a carrier from such liability as may rest upon it for loss and damage caused by it.

"Rule 130 is objectionable, because it conveys the impression that carriers do not undertake in any way to control the natural tendency of perishable freight to deteriorate or decay, although this is the purpose of protective service. Stated as follows, it would not be open to criticism:

"Carriers furnishing protective service as provided herein do not undertake to overcome the inherent tendency of perishable goods to deteriorate or decay, but merely to retard such deterioration or decay in so far as may be accomplished by reasonable protective service, of the kind and extent requested by the shipper, performed without negligence.

"To these, so amended, there should be added the following new rule in Section 1:

"Property accepted for shipment under the terms and conditions of this tariff will be received and transported subject to such directions, only, and to such election by the shipper respecting the character and incidents of the protective service as are provided for herein. The duty of the carriers is to furnish without negligence reasonable protective service of the kind and extent so directed or elected by the shipper, and carriers are not liable for any loss or damage that may occur because of acts of the shipper, or because his directions were incomplete, inadequate or ill-conceived.

"Reference to these general rules should from time to time be made in the special rules and regulations."

\* In *Northern Potato Traffic Ass'n. v. Chicago & A. Rd. Co.*<sup>2</sup> the Commission stated:

"The tariff provides under option 1 that the shipper may elect to assume responsibility for the protective service and thereby assume all responsibility for loss or damage due to cold or heat, not the direct result of negligence of the carrier. The prewarming is performed by the shipper, who also furnished the temporary lining or false flooring, or both, or stoves, for which an allowance will be made for the actual weight, but not to exceed 1,000 pounds, when loaded in insulated cars, or 2,500 pounds when loaded in other than insulated cars. The shippers must furnish the attendants for the fires. Under this option the carrier assumes no responsibility for ventilation of the cars and will not place them in roundhouses or other warming houses.

"Under option 2 the cars move under the carriers' protective service, for which the charge is made and the carrier assumes all liability for loss or damage due to cold or heat, not the direct result of the negligence of the shipper.



"The Cummins amendment became effective June 2, 1915. Under option No. 1 the shipper may elect to furnish the protective service and assume all responsibility for loss or damage due to cold or heat, not the direct result of negligence of the carrier. Complainant contends that the Cummins amendment took from the carrier the right to demand that the shipper assume any responsibility. But the defendants do not make any such demand. They offer to transport the shipments under carrier's full liability, or to permit the shipper to be his own insurer. In *Protection of Potato Shipments in Winter*, 26 I. C. C. Rep. 681, we stated in reference to the alternative rule then suggested by the carriers that it was, in our opinion:

"Fair and reasonable, in that it allows the shipper a choice between shipping his traffic at a lower rate under a special contract by which he becomes his own insurer against weather loss or damage or of making his shipments under terms imposing the full responsibility on the carriers."

"Rule 9 of the western classification provides that the acceptance and use of the uniform bill of lading is required; that property carried not subject to all the terms and conditions of the uniform bill of lading is to be carried at the carrier's liability, limited only as provided at common law and the laws of the United States and of the several states in so far as they apply, but subject to the terms and conditions of the uniform bill of lading in so far as they are not inconsistent with such common carrier's liability, and that in such instances a rate 10 per cent higher subject to a minimum increase of 1 cent per 100 pounds, will be charged.

"Complainant submits that when, effective January 1, 1914, the carriers published the protective service charges they increased the rates on potatoes because there existed no reason why the potato shipper could not have the benefit of the 10 per cent basis; that is, taking the rate to Chicago as illustrative, under the western classification rule providing for a 10 per cent increase in rates when the uniform bill of lading was not used, the rate would have been 17 cents plus 10 per cent, whereas the heater car charges to Chicago are \$21.60 per car. In other words, it is the contention of complainant that defendants increased the charges after January 1, 1910, and the burden of justifying them is upon the carriers. This goes to the question of the reasonableness of the heater car charges which has already been considered and ignores the fact that the classification rule contemplated only additional liability and not additional service.

"We held in *The Cummins Amendment*, 33 I. C. C., 682, 687:

"It is perfectly plain that the purpose of this law is, except as otherwise provided therein, to invalidate all limitations of carrier's liability for loss, damage or injury to property transported caused by the initial carrier or by another carrier to which it may be delivered or which may participate in transporting it.

"It was also stated on page 692 that:

"There is nothing in the express terms of this act or in the history of this legislation that shows any intent or purpose on the part of Congress to affect in any degree the existing rates charged by carriers for transporting property. The legislation is aimed at specified contracts and declares them to be unlawful. The lawful rates on file at this time, therefore, are the rates providing for the limited liability. The Cummins amendment, by making contracts limiting liability for loss caused by the carriers unlawful, does not destroy these rates, but they remain in effect and are lawfully applicable. For the 10 per cent increased rates are merely additional and can not stand in and of themselves.

"In *Miller & Co. v. N. P. Ry. Co.* (1915), 34 I. C. C. 154, 157, we said:

"It may be here noted, parenthetically, that where the heater service is performed by the shipper and loss or damage results from frost or overheating, not the direct

result of negligence by the carrier, such loss or damage is not caused by the carrier. It follows, therefore, that the rule here attacked does not violate the Cummins amendment of March 4, 1915, to section 20 of the act to regulate commerce.

“An appropriate order will be entered.”

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1. Perishable Freight Investigation (1920), 56 I. C. C. Rep. 449, 481, et seq.
  2. Northern Potato Traffic Association v. Chicago & A. Rd. Co. (1917), 44 I. C. C. Rep. 426, 434, 437.

2008-C. EXEMPTION OF CARRIER FROM DAMAGE TO LESS-THAN-CARLOAD SHIPMENTS OF PERISHABLE TRAFFIC WHERE THE TONNAGE IS INSUFFICIENT TO JUSTIFY THE MAINTENANCE OF PROTECTIVE SERVICES.

In *Longo Fruit Co. v. Illinois Traction System*<sup>1</sup> the Commission stated: “Section 1 of the act to regulate commerce requires carriers to furnish refrigerator cars upon reasonable request therefor and the main question presented is whether or not complainants’ request for refrigerator or heated cars for transportation of their less-than-carload shipments is reasonable. In *Lake-and-Rail Butter and Egg Rates*, 29 I. C. C., 45, we held the determining factor to be whether or not the tonnage offered was sufficient to render the request reasonable. Both this Commission and the courts have held that carriers have the right to make reasonable and appropriate rules respecting the acceptance and transportation of traffic.

“Complainants’ tonnage does not appear to be sufficient to warrant refrigerator or heated car service, and we find nothing unlawful or unreasonable in the notation placed on bills of lading exempting defendants from damage caused by freezing.

“The complaint will be dismissed.”

See “*Protective services on less-than-carload shipments of perishable freight*,” Section 1209, ante.

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1. *Longo Fruit Co. v. Illinois Traction System* (1916), 38 I. C. C. Rep. 487, 489.

2008-D. INVALIDITY OF TARIFF PROVISION SEEKING TO LIMIT CARRIER’S LIABILITY ON PERISHABLE TRAFFIC TRANSPORTED IN VENTILATED CARS WHICH HAVE BEEN IMPROVISED FROM OTHER EQUIPMENT.

In *Northern Potato Traffic Ass’n. v. Chicago & N. W. Ry. Co.*<sup>1</sup> the defendants’ tariff rule under which they seek to relieve themselves from liability for loss or damage on carload shipments of potatoes in stock cars, or in box cars with side doors fastened open for ventilation, found unreasonable and violative of the “Cummins Amendment” to the Act. The Interstate Commerce Commission, per Mr. Commissioner Daniels, stated: “Complainants allege that the tariff rule under which defendants disclaim liability on interstate carload shipments of potatoes from Minnesota and Wisconsin points when potatoes are loaded in stock cars or in box cars cleated open for ventilation, is unreasonable and otherwise unlawful in violation of sections 1 and 20 of the act. Complainants seek the cancellation of the rule.

“Supplemental complaint made the Director General of Railroads a party defendant. He answered but asked no further hearing. The



rule complained of was established in its original form December 1, 1915. Substantially the same rule continues in effect and is found in a supplement to agent Boyd's I. C. C. No. A-821, and reads as follows:

"When shippers of potatoes and other vegetables and fruits, in carloads, elect to load same in stock cars, or common box cars with side door or doors fastened open for ventilation, freight will be transported solely at owner's risk of loss or damage by heat, cold, pilferage, or leakage, not the direct result of actionable negligence of the carrier. In such cases the carrier will not accept or be governed by any instructions with respect to ventilation.

"Note 1. If car doors are cleated open, the following notation must be placed on bill of lading and waybill: 'Side doors cleated open by shipper.'

"Note 2. The provisions of items No. 800 and 825 will also apply during cold weather season between October 15th and the following April 15th, both inclusive.

"There is an early movement from Minnesota and Wisconsin during August, September, and the first half of October of new potatoes which are immature and require shipment with the utmost promptitude. Producers offer them during the period named in great quantities. These potatoes are sometimes loaded in bulk, but generally are sacked. To avoid deterioration in transit they require ventilation, especially as they commonly move into warmer latitudes. For approximately 30 years the carriers have furnished box cars for this freight. The shippers have cleated open the doors of the cars as much as 8 inches in order to obtain the necessary ventilation. Thefts are thus possible and have been frequent.

"The history of the rule assailed and its lineal predecessors beginning with the rule made effective December 1, 1915, is as follows: Shippers presented many claims for pilferage in connection with potatoes moving in cleated cars. The carriers, who hitherto had entertained and commonly paid such claims, conceived the idea of escaping the responsibility for pilferage by the formulation of a rule which purported to give the shipper the option of demanding a ventilated refrigerator car.

"Right here it may not be inappropriate to indicate what seems to us would have been the better way of meeting the situation which arose from increased pilferage. The carriers should have struck at the root of the evil. This they could have done by equipping box cars with screened doors. Or they might have provided more efficient policing, particularly at terminals where the pilferage seems to have been serious. If the expense of screened doors or extra police service warranted it, they might have sought to cover its cost by an appropriate increase in charges. They preferred to devise a rule purporting to give the shipper an option to obtain ventilated refrigerator equipment, failing which they disclaimed liability for pilferage and other loss and damage 'not the direct result of actionable negligence' of their own.

"We are not persuaded that the option carried by the rule is a real option. It is not real, but illusory, and we so find and determine.

"The situation disclosed of record is as follows: For many years prior to December 1, 1915, these potato shippers obtained ordinarily only box cars for this movement. The recognized necessity for ventilation established the practice of cleating the doors open. The attendant risk involving loss and damage had been accepted by the carriers. The burden of proof to show that an 'increased rate or proposed increased rate is just and reasonable' if made after January 1, 1910, is upon the carrier proponent. A rule narrowing the carriers' previously acknowledged liability for loss and damage is akin to an increased rate. The

burden therefore rests upon the carrier to show that the narrowed liability is just and reasonable. This burden of proof the carriers have not sustained. *Washington, D. C., Store-Door Delivery*, 27 I. C. C., 347; *Merchants & Manufacturers Asso. v. B. & O. R. R. Co.*, 30 I. C. C., 388.

"On its face the rule assailed purports to afford the potato shippers an option of loading in a more appropriate vehicle than a stock car or a box car cleated open. The rule does not, however, intimate how long a period of delay the carriers would insist was reasonable if the shipper elected to order the more appropriate vehicle. The rule, therefore, leaves the shipper in the dark as to the waiting he must undergo if he elects not to load in a stock car or a box car. We must also appraise the reasonableness of the assailed rule in the light of antecedent conditions. Practically unbroken usage for years previous had habituated the shipper to the use of cleated box cars. The same usage had habituated the shipper to the carriers' assumption of liability for loss and damage to potatoes so transported. It is a matter of common knowledge, and confirmed by this record, that the totality of ventilated refrigerator equipment controlled by defendants proves at times inadequate for the traffic requiring such equipment.

"It is to little purpose that defendants claim on the record that during the period here in question they have parked and out of use a surplus of ventilated refrigerator equipment. They assemble this equipment preparatory to the period subsequent to October 14 for the movement of perishable freight generally, which imperatively requires the appropriate equipment. Should they employ this equipment freely in August, September, and the first half of October in moving the traffic in question they would be more scantily provided than at present to move the potato traffic and other perishable freight in the colder season after October 15. These very complainants, along with other shippers of perishable freight, could avail themselves in the earlier season of ventilated refrigerator equipment only at their own greater peril of finding available no suitable equipment commensurate with their necessities when weather conditions after October 15 make the protective equipment indispensable.

"It is, therefore, to no particular purpose that defendants show that complainants under the present rule have refrained, prior to October 15, from ordering ventilated refrigerators. Complainants have so refrained because they have been so educated by the hard school of many years' past experience; they have refrained because the rule does not advise them how long they must wait for ventilated refrigerators if ordered; they have refrained because they have been penalized by being debarred from the use of box cars on hand when in infrequent cases they have put in orders for refrigerators; they have refrained because the urgency of this earlier potato traffic affords them no choice but to load the traffic in any available equipment, which is almost invariably the box car; they have refrained because they have been requested and encouraged by the defendants so to do. In short, the chain of circumstances surrounding the traffic has practically put them under duress, and the purported option carried in the rule assailed is one of which in practice they do not and cannot avail themselves.

"As we find the rule unreasonable, unlawful, and unjustifiable under section 1 of the act, it would be to no purpose to discuss in detail



in what respects the rule is also in violation of section 20. It appears to us, however, that the rule clearly violates section 20 as well as section 1.

"We shall therefore enter an order requiring the cancellation of the rule *in toto*. It would appear that no substitute or alternative rule involving the infirmities pointed out above would be reasonable. An appropriate order will enter."

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1. Northern Potato Traffic Association v. Chicago & N. W. Ry. Co. (1919), 53 I. C. C. Rep. 100, et seq. Cited in, Perishable Freight Investigation (1920), 56 I. C. C. Rep. 449, 560. The latter case carries a complete analysis by the Interstate Commerce Commission of the reasonableness and validity of the rules and regulations contained in carriers' "Perishable Protective Tariff No. 1," to which reference is hereby made.

2008-E. VALIDITY OF LIMITED-LIABILITY PROVISIONS IN RECEIPTS, BILLS OF LADING, AND CONTRACTS OF SHIPMENT IN INTERSTATE AND FOREIGN COMMERCE.

See "*Validity of limited-liability provisions in receipts, bill of lading, and contracts of shipment in interstate and foreign commerce*," Section 2016, *post*.

2008-F. VALIDITY OF LIMITED-LIABILITY PROVISIONS IN CLASSIFICATIONS AND TARIFFS OR RATE SCHEDULES.

See "*Validity of limited-liability provisions in classifications and tariffs or rate schedules*," Section 2017, *post*.

2009. Limitation of vessel owner's liability in foreign commerce.

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2009-A. ISSUANCE OF THROUGH BILL OF LADING WHEN SPACE ON VESSEL IS RESERVED.

Section 26 (4) of the Interstate Commerce Act reads as follows:

When any consignor delivers a shipment of property to any of the places so specified by the Commission, to be delivered by a railway carrier to one of the vessels upon which space has been reserved at a specified rate previously ascertained, as provided herein, for the transportation by water from and for a port named in the aforesaid schedule, the railway carrier shall issue a through bill of lading to the point of destination.

See "*Tariffs covering export and import traffic*," Section 3037, *post*; and "*Forms of bills of lading prescribed by the Interstate Commerce Commission in interstate and foreign commerce*," Section 2016-W, *post*.

2009-B. BILL OF LADING COVERING EXPORT TRAFFIC TO CONTAIN SEPARATE STATEMENT OF CHARGES FOR RAIL AND WATER TRANSPORTATION.

Section 26 (4) of the Interstate Commerce Act provides that where the carrier issues a through bill of lading that such bill of lading shall name separately the charge to be paid for railway transportation, water transportation, and port charges, if any, not included in the rail or water transportation charge.

2009-C. RAIL CARRIER NOT LIABLE FOR EXPORT SHIPMENT AFTER DELIVERY  
TO VESSEL UNDER UNITED STATES REGISTRY.

Section 26 (4) of the Interstate Commerce Act provides that no export traffic the carrier by railroad shall not be liable to the consignor, consignee, or other person interested in the shipment after its delivery to the vessel.

2009-D. PROTECTION OF LIMITED LIABILITY FOR WATER CARRIERS IN RULE  
TO BE PRESCRIBED BY THE INTERSTATE COMMERCE COMMISSION.

Section 26 (4) of the Interstate Commerce Act provides as follows:

The Commission shall, in such manner as will preserve for the carrier by water the protection of limited liability provided by law, make such rules and regulations not inconsistent herewith as will prescribe the form of such through bill of lading.

2009-E. DUTY OF RAILROAD TO DELIVER EXPORT SHIPMENT TO VESSEL.

Section 26 (4) of the Interstate Commerce Act provides that on all shipments delivered to a carrier for export in foreign commerce that it shall be the duty of the carrier by railroad to deliver such shipment to the vessel as a part of its undertaking as a common carrier.

2009-F. ISSUANCE OF THROUGH EXPORT BILL OF LADING NOT ARRANGEMENT  
FOR CONTINUOUS CARRIAGE OR SHIPMENT.

Section 26 (5) of the Interstate Commerce Act provides as follows:

The issuance of a through bill of lading covering shipments provided for herein shall not be held to constitute "an arrangement for continuous carriage or shipment" within the meaning of this Act.

2009-G. CARRIER NOT LIABLE UNDER AN ULTRA VIRES CONTRACT.

In *Hamlen & Sons Co. v. Illinois C. Rd. Co.*<sup>1</sup> Mr. District Judge Trieber stated: "Is it liable on the contract made before the freight was delivered and the bills of lading issued? Ordinarily the written contract is held to merge all negotiations previously had, but the plaintiff claims that it is entitled to recover on the agreement and guaranty of the defendant, as without it the shipments would not have been made over its lines.

"There are two reasons why this contention is untenable.

"First. A railroad company has no power, unless expressly, or by necessary implication, authorized by its charter, to guarantee the performance of duties by another carrier, and there is no evidence that the defendant is so authorized. It is true that a carrier may, at common law, lawfully enter into a contract for the carriage of freight over connecting lines by issuing a bill of lading whereby it undertakes absolutely to carry and deliver a shipment to a destination on another line, but there was no such contract here. All that can be claimed is that it is liable on its guaranty to secure the rate of \$9.60 per long ton from New Orleans to Buenos Aires. But it had no right to make a guaranty. That it arranged for the transportation at that rate is admitted, and that is the most it could lawfully agree to do.



"The cases relied on by counsel for the plaintiff (*Northern Pacific R. R. Co. v. American Trading Co.*, 195 U. S. 439, 25 Sup. Ct. Rep. 84, 49 L. Ed. 269, and *Southern Pacific Co. v. Interstate Commerce Com.*, 200 U. S. 536, 26 Sup. Ct. 330, 50 L. Ed. 585), may be distinguished on the facts, but that is unnecessary, as both of these cases arose and were determined by the court prior to the enactment of Hepburn Act, June 29, 1906. Section 2 of that act amends section 6 of the former act as to read as follows:

"That every common carrier subject to the provisions of this act shall file with the Commission created by this act and print and keep open to public inspection schedules showing all the rates, fares and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation."

"It then proceeds to prescribe how the schedules shall be prepared and filed.

"As it is not contended that any through rate to Buenos Aires was ever filed by the defendant, it could not indirectly assume a liability which the law prohibits it from assuming directly. The ocean rates were not required to be published, and, for reasons stated in *Re Export and Domestic Rates*, 8 Interst. Com. Com'n R. 214, 276, *Re Tariffs and Export and Import Traffic*, 10 Interst. Com. Com'n R. 68, and *Armour Packing Co. v. United States*, 209 U. S. 78, 28 Sup. Ct. 428, 52 L. Ed. 681, and could not properly be made."

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1. *Hamlen & Sons Co. v. Illinois C. Rd. Co.* (1914), 212 Fed. Rep. 324, 327.

#### 2009-H. CLAUSES IN VESSEL OWNERS' BILLS OF LADING RELIEVING FROM LIABILITY FOR NEGLIGENCE IN LOADING, DELIVERY, ETC. OF FOREIGN COMMERCE, PROHIBITED.

Section 1 of the Harter Act<sup>1</sup> provides as follows:

That it shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document, any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in the proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in the bills of lading or shipping receipts shall be null and void and of no effect.

By authority of Section 7 of the Harter Act, the above provisions shall not apply to the transportation of live animals.<sup>2</sup>

The words "any vessel transporting merchandise or property from or between ports of the United States and foreign ports," include a foreign vessel transporting merchandise from a foreign port to a port in the United States.<sup>3</sup>

This section applies to any shipment "from ports of the United States," whether to a foreign or domestic port, and is broad enough to render void a clause of the bill of lading by which the shipper waives any lien upon the vessel for any breach thereof, where it is attempted to set up such clause as a defense to a libel *in rem* to recover for loss or damage to cargo arising from negligence of the carrier.<sup>4</sup>

A contract by a lighterage company to carry the product of a manufacturing company in and about New York Harbor, furnishing the full capacity of its vessels, made it a private carrier; and a pro-

vision of its contract that it should not be liable for goods lost or damaged, but requiring the owner to insure against such loss, is valid.<sup>6</sup>

The Harter Act was designed to modify the relations previously existing between vessels and their cargoes, and has no reference to relations between owners and charterers.<sup>6</sup>

1. Harter Act, approved February 13, 1893. (27 Stat. L. 445.) Section 8 of this Act provides as follows: "That this Act shall take effect from and after the first day of July, eighteen hundred and ninety-three." (27 Stat. L. 446.) *LIABILITY OF VESSEL: Proper care of cargo*—The Persiana (1911), 185 Fed. Rep. 396, 107 C. C. A. 416, reversing, 156 Fed. Rep. 1019. *Negligence in stowage*—Knott v. Botany Worsted Mills (1900), 179 U. S. 69, 21 Sup. Ct. Rep. 30, 45 L. Ed. 90; Bethel v. Mellor & Rittenhouse Co. (1904), 131 Fed. Rep. 129; Donaldson v. Perry Co. (1905), 138 Fed. Rep. 643, 71 C. C. A. 93; Trignac (1909), 169 Fed. Rep. 682; The Soyo Maru (1910), 178 Fed. Rep. 921, 102 C. C. A. 428; The Oceana (1909), 171 Fed. Rep. 172; The Neidenfels (1909), 174 Fed. Rep. 293; The Skipton Castle (1915), 223 Fed. Rep. 839. *Cargo stowed without damage*—Dowgate Steamship Co. v. Arbuckle (1907), 158 Fed. Rep. 179; The Palmes (1901), 108 Fed. Rep. 87, 47 C. C. A. 220. *Employment of charterer's stevedores*—Bethel v. Mellor & Rittenhouse Co. (1904), 131 Fed. Rep. 129; Knorr v. Pacific Creosoting Co. (1910), 181 Fed. Rep. 856. *Negligent failure to deliver because of improper stowage*—Calderon v. Atlas Steamship Co. (1898), 170 U. S. 272, 18 Sup. Ct. Rep. 588, 42 L. Ed. 1033. *Improper loading as primary cause of damage*—The Oneida (1904), 128 Fed. Rep. 687, 63 C. C. A. 239, application for writ of certiorari denied (1904), 194 U. S. 632, 48 L. Ed. 1159, 24 Sup. Ct. Rep. 856. *Grounding of vessel while loading*—California Navigation & Improvement Co. v. Stockton Milling Co. (1911), 184 Fed. Rep. 369, affirming, 165 Fed. Rep. 356, *Hurried and imprudent unloading*—The Germanic (1905), 196 U. S. 589, 25 Sup. Ct. Rep. 317, 49 L. Ed. 610, affirming, 124 Fed. Rep. 1, 59 C. C. A. 521. *Failure to ventilate cargo*—The Jeanbart (1911), 197 Fed. Rep. 1002. *Jettison of cargo*—The Whitteburn (1898), 89 Fed. Rep. 528.

*CONSTRUCTION AND VALIDITY OF EXEMPTION:* The Jason (1912), 225 U. S. 32, 32 Sup. Ct. Rep. 560, 56 L. Ed. 969; The Toronto (1909), 174 Fed. Rep. 632, 98 C. C. A. 386, affirming 168 Fed. Rep. 386.

*NEGLIGENCE OF OWNER OR SERVANTS:* Gilchrist Transportation Co. v. Boston Insurance Co. (1915), 223 Fed. Rep. 716, 139 C. C. A. 246; The Manitoba (1900), 104 Fed. Rep. 145; The Germanic (1903), 124 Fed. Rep. 1, 59 C. C. A. 521.

*LOSS BY THEFT:* Cunard Steamship Co. v. Kelley (1902), 115 Fed. Rep. 678, 53 C. C. A. 310; The Seneca (1908), 163 Fed. Rep. 591; The Ghazee (1909), 172 Fed. Rep. 368, 97 C. C. A. 66.

*DEVIATION FROM COURSE:* Swift v. Furness (1898), 87 Fed. Rep. 345.

*SHORTAGE IN WEIGHT:* The La Krona (1905), 138 Fed. Rep. 936.

*DAMAGE THROUGH USE OF LIGHTERS:* The Seaboard (1902), 119 Fed. Rep. 375.

*LIMITATION OF TIME FOR FILING CLAIM:* The Queen of the Pacific, (1901), 180 U. S. 49, 21 Sup. Ct. Rep. 278, 45 L. Ed. 419, reversing, 94 Fed. Rep. 180, 36 C. C. A. 134; The Niceto (1905), 134 Fed. Rep. 655.

*LIMITATION ON ACCOUNT OF RECOVERY:* Hohl v. Norddeutscher Lloyd (1910), 175 Fed. Rep. 544, 98 C. C. A. 166, reversing 169 Fed. Rep. 990; Hart v. Pennsylvania Rd. Co. (1884), 112 U. S. 331, 5 Sup. Ct. Rep. 151, 28 L. Ed. 717; Calderon v. Atlas Steamship Co. (1898), 170 U. S. 272, 18 Sup. Ct. Rep. 588, 42 L. Ed. 1033.

*EXEMPTION OF LIABILITY AUTHORIZED BY FOREIGN LAW:* The Kensington (1902), 183 U. S. 263, 22 Sup. Ct. Rep. 102, 46 L. Ed. 190, reversing, 94 Fed. Rep. 885, 36 C. C. A. 553; The Fri (1907), 154 Fed. Rep. 333, 83 C. C. A. 205, reversing 140 Fed. Rep. 123; writ of certiorari denied (1908), 210 U. S. 431, 28 Sup. Ct. Rep. 761, 52 L. Ed. 1135.

*QUESTIONS OF EVIDENCE:* Donaldson v. Perry Company (1905), 138 Fed. Rep. 643, 71 C. C. A. 93.

*BURDEN OF PROOF:* Clark v. Barnwell (1851), 12 Howard 272, 13 L. Ed. 985; Dolbadar Castle (1915), 222 Fed. Rep. 838, 138 C. C. A. 264, affirming 212 Fed. Rep. 565; The Henry B. Hyde (1898), 90 Fed. Rep. 114, 32 C. C. A. 534; The Good Hope (1912), 197 Fed. Rep. 149, 116 C. C. A. 573, modifying 190 Fed. Rep. 597; The Portneuse (1888), 35 Fed. Rep. 670; The Patria (1904), 132 Fed. Rep. 971, 68 C. C. A. 397; The Folmina (1907), 153 Fed. Rep. 364, 82 C. C. A. 440; The St. Quentin (1908), 162 Fed. Rep. 883, 89 C. C. A. 573; The Baralong (1909), 172 Fed. Rep. 220, 97 C. C. A. 24; The Konigin Luise (1911), 185 Fed. Rep. 478, 107 C. C. A. 578; The Koranna (1914), 214 Fed. Rep. 172; The Glenloch (1915), 226 Fed. Rep. 971.

2. Harter Act, Section 7. (27 Stat. L. 446.)

3. Knott v. Botany Worsted Mills (1900), 179 U. S. 69, 21 Sup. Ct. Rep. 30, 45 L. Ed. 90.

4. The Tampico (1907), 151 Fed. Rep. 689.

5. The Maine (1909), 170 Fed. Rep. 915, reversing 161 Fed. Rep. 401.

6. Lake Steamshipping Co. v. Bacon (1914), 129 Fed. Rep. 819.



2009-I. COVENANTS IN VESSEL'S SHIPPING DOCUMENT AVOIDING EXERCISE OF DUE DILIGENCE IN EQUIPPING VESSEL, PROHIBITED.

Section 2 of the Harter Act<sup>1</sup> provides as follows:

That it shall not be lawful for any vessel transporting merchandise or property from or between ports of the United States of America and foreign ports, her owner, master, agent, or manager, to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel to exercise due diligence (to) properly equip, man, provision, and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents, or servants, to carefully handle and stow her cargo and to care for and properly deliver same, shall in any wise be lessened.

Section 3 of the Harter Act must be read with this Section to effectuate the purpose of the Act, and shows the intention upon the part of Congress to relax in certain respects the harshness of the previous rules of obligation upon shipowners, providing the owner was using due diligence to make the vessel seaworthy in all respects, in which event neither the vessel nor the owner shall be liable, among other things, for faults in management, or for loss through inherent defect, quality or vice of the thing carried.<sup>2</sup>

Sections 2 and 3 of the Act must be read together, both being intended to enforce the same rule of diligence in respect to the same subject-matter.<sup>3</sup>

Before the passage of the Harter Act it was the settled law of the United States Supreme Court that, in the absence of special contract, there was a warranty upon the part of the ship owner that the ship was seaworthy at the beginning of her voyage. The warranty was absolute and did not depend upon the knowledge of the owner or the diligence of his efforts to provide a seaworthy vessel.<sup>4</sup>

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1. Harter Act, Section 2. (27 Stat. L 445.)

*APPLICATION OF ACT TO CHARTER PARTY:* *Golcar Steamship Co. v. Tweedie Trading Co.* (1906), 146 Fed. Rep. 563.

*APPLICATION OF ACT TO PASSENGERS AND BAGGAGE:* *The Kensington* (1902), 183 U. S. 263, 22 Sup. Ct. Rep. 103, 46 L. Ed. 190, reversing 94 Fed. Rep. 885, 36 C. C. A. 533; *Deslions v. LaCompagnie Generale Transatlantique* (1908), 210 U. S. 95, 28 Sup. Ct. Rep. 664, 52 L. Ed. 973, affirming 144 Fed. Rep. 781, 75 C. C. A. 647.

*DUTY TO FURNISH SEAWORTHY SHIP:* *The Carib Prince* (1898), 170 U. S. 655, 18 Sup. Ct. Rep. 753, 42 L. Ed. 1181; *The Germanic* (1903), 124 Fed. Rep. 1, 59 C. C. A. 621; *The Prussia* (1899), 93 Fed. Rep. 837, 35 C. C. A. 625.

*LATENT DEFECTS:* *The Prussia* (1899), 93 Fed. Rep. 837, 35 C. C. A. 625; *The Carib Prince* (1898), 170 U. S. 655, 18 Sup. Ct. Rep. 753, 42 L. Ed. 1181.

*INTEMPERATE HABITS OF MASTER:* *The Guildhall* (1893), 58 Fed. Rep. 796.

*DAMAGE THROUGH OBSTRUCTION OF VALVE:* *The Brilliant* (1905), 138 Fed. Rep. 745, affirmed 159 Fed. Rep. 1022, 86 C. C. A. 671; *The Viking* (1921), 271 Fed. Rep. 801.

*SUBSTITUTED DELIVERY:* *Portuguese Prince* (1913), 209 Fed. Rep. 995.

2. *The Southwark* (1903), 191 U. S. 1, 24 Sup. Ct. Rep. 1, 48 L. Ed. 65.

3. *The Prussia* (1899), 93 Fed. Rep. 837, 35 C. C. A. 625.

4. *The Southwark* (1903), *supra*.

2009-J. VESSEL OWNER NOT LIABLE FOR PERILS OF THE SEA, ACT OF GOD, PUBLIC ENEMY, OR INHERENT VICE OR NATURE OF THE GOODS.

Section 3 of the Harter Act<sup>1</sup> provides as follows:

That if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel, her owner or owners, agent, or charterers shall become or be held responsible

for damage or loss resulting from faults or errors in navigation or in the management of said vessel nor shall the (*sic*) vessel, her owner or owners, charterers, agent, or master be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service.

The purpose of the Act is to enable the owner to stipulate in contravention of the implied warranty, providing he has used due diligence, proper care and reasonable foresight to make his vessel in all respects seaworthy.<sup>2</sup>

In determining the effect of this statute in restricting the operation of well-settled principles, the proper course is to treat these principles as still existing and to limit the relief from their operation afforded by the statute to that called for by the language itself.<sup>3</sup>

The trend of judicial decision has been to construe this Act strictly. The law has been stated as follows: "The greatest amount of litigation under the Act has centered around the third section. This section does not release the owner from the duty of furnishing a seaworthy vessel at the beginning of the voyage, nor affect his liability for damages to the cargo arising from unseaworthiness, but only exempts him from liability for damage arising from risks therein designated when due diligence has been used to make the vessel seaworthy."<sup>4</sup>

1. Harter Act, Section 3 (27 Stat. L. 445).

**OPERATION OF THE STATUTE:** Humboldt Lumber Manufacturers' Association v. Christopherson (1896), 73 Fed. Rep. 247, 19 C. C. A. 481; Ramsdell Transportation Co. v. Campagne Generale Transatlantique (1894), 63 Fed. Rep. 855; The Indrapura (1910), 178 Fed. Rep. 591, affirmed, 190 Fed. Rep. 711; Pendleton v. Benner Line (1918), 62 L. Ed. 770, 246 U. S. 353, 38 Sup. Ct. Rep. 330.

**SCOPE OF SECTION: Causes for exemption—**The Manitoba (1900), 104 Fed. Rep. 145. **Foreign vessels—**The Silvia (1898), 171 U. S. 462, 19 Sup. Ct. Rep. 7, 43 L. Ed. 241; The Chattahoochee (1899), 173 U. S. 540, 19 Sup. Ct. 491, 43 L. Ed. 801, affirming, 74 Fed. Rep. 899, 21 C. C. A. 162; The Germanic (1905), 196 U. S. 589, 25 Sup. Ct. Rep. 317, 49 L. Ed. 610, affirming, 124 Fed. Rep. 1, 59 C. C. A. 521. **Transportation between domestic ports—**The E. A. Shores, Jr. (1896), 73 Fed. Rep. 342; The Nettle Quill (1903), 124 Fed. Rep. 667; *In Re Piper Aden Goodall Co.* (1899), 86 Fed. Rep. 670. **Contracts with charterers—**Hine v. New York & Bermudez Co. (1895), 68 Fed. Rep. 920; affirmed 73 Fed. Rep. 852; The George Dumois (1902), 115 Fed. Rep. 65, reversing 88 Fed. Rep. 537; Baltimore & Boston Barge Co. v. Eastern Coal Co. (1912), 195 Fed. Rep. 483, 115 C. C. A. 393. **Application to passengers—**The Rosedale (1898), 88 Fed. Rep. 324, affirmed 92 Fed. Rep. 1021, 35 C. C. A. 167; The Kensington (1902), 183 U. S. 263, 22 Sup. Ct. Rep. 102, 46 L. Ed. 190; Moses v. Hamburg-American Packet Co. (1898), 88 Fed. Rep. 329; *In re California Navigation and Improvement Co.* (1901), 110 Fed. Rep. 678.

**RIGHT TO SUBJECT SECURITY FUNDS:** *In Re California Navigation & Improvement Co.* (1901), 110 Fed. Rep. 678.

**COMBINATION OF NEGLIGENT ACTS:** The Germanic (1905), 196 U. S. 589, 25 Sup. Ct. Rep. 317, 49 L. Ed. 610, affirming 124 Fed. Rep. 1.

**OWNER'S LIABILITY:** The Manitoba (1900), 104 Fed. Rep. 145; The Onelda (1901), 108 Fed. Rep. 886; The Concord (1893), 58 Fed. Rep. 913.

**LOSS OF GOODS IN LOADING:** Munson Steamship Line v. Stieger (1905), 136 Fed. Rep. 772, 69 C. C. A. 492.

**"DANGERS OF THE SEA:"** Nord-Deutscher Lloyd v. Insurance Co. of North America (1901), 110 Fed. Rep. 420, 49 C. C. A. 1; Corsar v. Spreckels & Bros. Co. (1905), 141 Fed. Rep. 260, 72 C. C. A. 378; Goff v. Hamburg Amerikanische Packetfahrt Aktiengesellschaft (1907), 158 Fed. Rep. 174; The Gualala (1910), 178 Fed. Rep. 402, 102 C. C. A. 548; The Medea (1910), 179 Fed. Rep. 781, 103 C. C. A. 273, reversing 173 Fed. Rep. 498; Cook v. Southeastern Lime & Cement Co. (1906), 146 Fed. Rep. 101; The Medea (1910), 179 Fed. Rep. 781, 103 C. C. A. 273, reversing 173 Fed. Rep. 478; The Lanfond (1906), 143 Fed. Rep. 150.

**"INHERENT DEFECT, QUALITY, OR VICE OF THING CARRIED:"** The M. C. Currie (1904), 132 Fed. Rep. 125; The Niceto (1905), 134 Fed. Rep. 655; The Claverburn (1906), 147 Fed. Rep. 650.

**COLLISION:** The Delaware (1896), 161 U. S. 459, 16 Sup. Ct. Rep. 516, 40 L. Ed. 771; The Viola (1893), 59 Fed. Rep. 632; The Viola (1894), 60 Fed. Rep. 299;



The Berkshire (1893), 59 Fed. Rep. 1007; Monongahela River Consolidated Coal & Coke Co. v. Hurst (1913), 200 Fed. Rep. 711, 119 C. C. A. 127; The Chattahoochee (1899), 173 U. S. 540, 19 Sup. Ct. Rep. 491, 43 L. Ed. 801, affirming 74 Fed. Rep. 899, 21 C. C. A. 162; The George W. Roby (1901), 111 Fed. Rep. 601, 49 C. C. A. 481.

**BAGGAGE OF PASSENGER:** The Rosedale (1898), 88 Fed. Rep. 324, affirmed 92 Fed. Rep. 1021, 35 C. C. A. 167.

**LIABILITY FOR DEVIATION:** The Citta Di Messina (1909), 169 Fed. Rep. 472; The Chinese Prince (1894), 61 Fed. Rep. 697; The Wells City (1894), 61 Fed. Rep. 857, 10 C. C. A. 123; The Florence (1895), 65 Fed. Rep. 248, affirmed 71 Fed. Rep. 527, 18 C. C. A. 240; *In re Meyer* (1896), 74 Fed. Rep. 881.

**NEGLIGENCE IN TOWING:** The Murrell (1911), 200 Fed. Rep. 826, affirmed *Baltimore & Boston Barge Co. v. Eastern Coal Co.* (1912), 195 Fed. Rep. 483, 115 C. C. A. 393.

**SALVAGE:** The Ereza (1903), 124 Fed. Rep. 659.

**REDUCTION IN FREIGHT:** *Carolina Portland Cement Co. v. Anderson* (1911), 186 Fed. Rep. 145, 108 C. C. A. 257.

**GENERAL AVERAGE:** The Irrawaddy (1898), 171 U. S. 187, 18 Sup. Ct. Rep. 831, 43 L. Ed. 130; The Jason (1910), 178 Fed. Rep. 414, 101 C. C. A. 628, affirming 162 Fed. Rep. 56; modified *The Jason* (1912), 225 U. S. 32, 56 L. Ed. 960, 32 Sup. Ct. Rep. 560; The Strathdon (1899), 94 Fed. Rep. 206; The Trinidad Shipping & Trading Co. v. Frame (1898), 88 Fed. Rep. 528; *New York & Cuba Mail Steamship Co. v. Ansonia Clock Co.* (1905), 139 Fed. Rep. 894.

**INTEREST:** The Manitoba (1887), 122 U. S. 97, 7 Sup. Ct. Rep. 1158, 30 L. Ed. 1095.

**COSTS:** The E. A. Shores, Jr. (1897), 79 Fed. Rep. 98, affirming 73 Fed. Rep. 342; The Harry Hudson Smith (1905), 142 Fed. Rep. 724, 74 C. C. A. 56, affirming 136 Fed. Rep. 271.

**COMPETENCY OF MASTER:** *In Re Meyer* (1896), 74 Fed. Rep. 881.

**"CREW:"** *In Re Meyer* (1896), 74 Fed. Rep. 881.

**CHINESE SAILORS:** *In Re Pacific Mail Steamship Co.* (1904), 130 Fed. Rep. 76, 64 C. C. A. 410, reversing 126 Fed. Rep. 1020.

**FAILURE TO MAINTAIN WATCH AT NIGHT ON VESSEL AT PIER:** The Valentine (1904), 131 Fed. Rep. 352.

**FOG HORN:** The Niagara (1898), 84 Fed. Rep. 902, 28 C. C. A. 528, 55 U. S. App. 445.

**DUE DILIGENCE TO MAKE VESSEL SEAWORTHY:** *Nord Deutcher Lloyd v. Insurance Co. of North America* (1901), 110 Fed. Rep. 420, 49 C. C. A. 1; *Grubnan v. The Ontario* (1902), 115 Fed. Rep. 769, 53 C. C. A. 199; *The Jane Grey* (1900), 99 Fed. Rep. 51; *The Oneida* (1901), 108 Fed. Rep. 886; *The May L. Peters* (1895), 68 Fed. Rep. 919, affirmed 79 Fed. Rep. 998, 25 C. C. A. 681; *The Ninfa* (1907), 156 Fed. Rep. 512; *The R. P. Fitzgerald* (1914), 212 Fed. Rep. 678, 129 C. C. A. 214; *The Southwark* (1903), 191 U. S. 1, 24 Sup. Ct. Rep. 1, 48 L. Ed. 65; *The Jean Bart* (1911), 197 Fed. Rep. 1002; *The Carib Prince* (1898), 170 U. S. 655, 18 Sup. Ct. Rep. 753, 42 L. Ed. 1181; *Insurance Co. of North America v. German Lloyd Co.* (1900), 106 Fed. Rep. 973; *The C. W. Elphicke* (1903), 122 Fed. Rep. 439, 58 C. C. A. 421; *The Sandfield* (1898), 92 Fed. Rep. 663, 34 C. C. A. 612; *American Sugar Refining Co. v. Rickinson* (1903), 124 Fed. Rep. 188, 59 C. C. A. 604. *Affirmative proof of due diligence*—*The Murrell* (1911), 200 Fed. Rep. 826. *"Seaworthiness" defined*—*The Indrapura* (1910), 178 Fed. Rep. 591. *Liability for unseaworthiness*—*The Ninfa* (1907), 156 Fed. Rep. 512. *Implied warranty of seaworthiness*—*The Indrapura* (1910), 178 Fed. Rep. 591, affirmed 190 Fed. Rep. 711, 112 C. C. A. 351. *Negligence of agents*—*The Flamborough* (1895), 69 Fed. Rep. 470. *Failure to close port holes*—*The Manitoba* (1900), 104 Fed. Rep. 145; *International Navigation Co. v. Farr & Bailey Mfg. Co.* (1901), 181 U. S. 218, 21 Sup. Ct. Rep. 591, 45 L. Ed. 830. *Worn plates*—*The Flamborough* (1895), 69 Fed. Rep. 470. *Surveyor's certificate as evidence of diligence*—*The Abbazia* (1904), 127 Fed. Rep. 495. *Private carrier*—*Braker v. Jarvis Co.* (1908), 166 Fed. Rep. 987. *Voyage charter*—*Dene Shipping Co. v. Tweedie Trading Co.* (1905), 143 Fed. Rep. 854, 74 C. C. A. 606, affirming 133 Fed. Rep. 589; writ of certiorari denied (1906), 206 U. S. 222, 26 Sup. Ct. Rep. 767, 50 L. Ed. 1175. *Losses before commencement of voyage*—*Steamship Wellesley Co. v. Hooper* (1911), 185 Fed. Rep. 733, 108 C. C. A. 71. *Latent defects*—*The Sandfield* (1898), 92 Fed. Rep. 663, 34 C. C. A. 612; *The Indrapura* (1911), 190 Fed. Rep. 711, 112 C. C. A. 351, affirming 178 Fed. Rep. 591. *Injury due to stopping for repairs*—*The Gordon Campbell* (1905), 141 Fed. 435. *Manner of stowing cargo*—*The Germanic* (1903), 124 Fed. Rep. 1, 59 C. C. A. 521; *Corsar v. Spreckles & Bros. Co.* (1905), 141 Fed. Rep. 260, 72 C. C. A. 378; *The Medea* (1910), 179 Fed. Rep. 781, 103 C. C. A. 273, reversing 173 Fed. Rep. 498; *Steamship Wellesley Co. v. Hooper* (1911), 185 Fed. Rep. 733, 108 C. C. A. 71; *Olsen v. United States Steamship Co.* (1914), 213 Fed. Rep. 18, 129 C. C. A. 608; *The Oneida* (1904), 128 Fed. Rep. 687, 63 C. C. A. 239; *The Frey* (1899), 92 Fed. Rep. 667; *The Sintram* (1894), 64 Fed. Rep. 884; *The Hudson* (1903), 122 Fed. Rep. 96; *The Mexican Prince* (1897), 82 Fed. Rep. 484, affirmed 91 Fed. Rep. 1003, 34 C. C. A. 168; *Lazarus v. Barber* (1905), 136 Fed. Rep. 534, 69 C. C. A. 310; *The Tjomo* (1902), 115 Fed. Rep. 919; *The Mexican Prince* (1895), 70 Fed. Rep. 246. *Overloading*—*The G. B. Boren* (1904), 132

Fed. Rep. 887. *Weakness of barge from long usage*—The Willie (1904), 134 Fed. Rep. 759. *Unexplained sinking of vessel as presumption of unseaworthiness*—Oregon Round Lumber Co. v. Portland & Asiatic S. S. Co. (1908), 162 Fed. Rep. 912; Sanbern v. Wright & Cobb Lighterage Co. (1909), 171 Fed. Rep. 449, affirmed 179 Fed. Rep. 1021, 102 C. C. A. 666. *Insufficient coal for voyage as evidence of unseaworthiness*—British & Foreign Marine Insurance Co. v. Kilgour S. S. Co., Ltd. (1910), 184 Fed. Rep. 174. *Failure to inspect vessel*—The Indrani (1910), 177 Fed. Rep. 914, 110 C. C. A. 194. *Failure to close steam valves*—The Manitou (1902), 116 Fed. Rep. 60. *Failure to protect water valves*—The Brilliant (1905), 138 Fed. Rep. 743, affirmed 159 Fed. Rep. 1022, 86 C. C. A. 671. *Failure to cover hatches*—The Hyades (1903), 124 Fed. Rep. 58, 59 C. C. A. 424; The C. W. Elphicke (1903), 122 Fed. Rep. 439, 58 C. C. A. 421. *Failure to close ports*—The Tenedos (1905), 137 Fed. Rep. 443, affirmed 151 Fed. Rep. 1022, 82 C. C. A. 671. *Deviation in compass*—The E. A. Shores, Jr. (1896), 73 Fed. Rep. 342, affirmed 79 Fed. Rep. 987. *Defective boiler*—The Abbazia (1904), 127 Fed. Rep. 495. *Defective pipes*—The Indrapura (1910), 178 Fed. Rep. 591; The Rappahannock (1911), 184 Fed. Rep. 291, 107 C. C. A. 74, reversing 173 Fed. Rep. 829. *Defective pumps*—Carolina Portland Cement Co. v. Anderson (1911), 186 Fed. Rep. 145, 108 C. C. A. 257; The Millie R. Bohannon (1894), 64 Fed. Rep. 883. *Sudden leakage while loading*—Donaldson v. Perry Co. (1905), 138 Fed. Rep. 643, 71 C. C. A. 93. *Failure to provide sounding pipe*—The Mexican Prince (1897), 82 Fed. Rep. 484, affirmed 91 Fed. Rep. 1003, 34 C. C. A. 168. *Crack in cement lining of iron vessel*—The Alvena (1897), 79 Fed. Rep. 973, 24 C. C. A. 261. *Cracked beams*—The Guadeloupe (1899), 92 Fed. Rep. 670. *Effect of finding of seaworthiness by trial court*—The Wildcroft (1906), 201 U. S. 378, 26 Sup. Ct. Rep. 467, 50 L. Ed. 794.

**NAVIGATION OR MANAGEMENT OF SHIP:** The Newport News (1912), 199 Fed. Rep. 968. *Meaning of words "navigation" and "management"*—The Silvia (1898) 171 U. S. 462, 19 Sup. Ct. Rep. 7, 43 L. Ed. 241; The Nettie Quill (1903), 124 Fed. Rep. 667; *In re Meyer* (1896), 74 Fed. Rep. 881. *Exemption applicable only after commencement of voyage*—Ralli v. New York & T. S. S. Co. (1907), 154 Fed. Rep. 286, 83 C. C. A. 290; Gilchrist Transportation Co. v. Boston Insurance Co. (1915), 223 Fed. Rep. 716, 139 C. C. A. 246. *Leaving port in disregard of port signals*—Hanson v. Haywood Bros. & Wakefield Co. (1907), 152 Fed. Rep. 401, 81 C. C. A. 527. *Tipping vessel for examination of propeller*—The Indrani (1910), 177 Fed. Rep. 914, 101 C. C. A. 194. *Improper handling of cargo*—The Germanic (1903), 124 Fed. Rep. 1, 59 C. C. A. 521, affirmed 196 U. S. 589, 24 Sup. Ct. Rep. 317, 49 L. Ed. 610. *Jettison of cargo*—The Whitlieburn (1898), 89 Fed. Rep. 526. *Failure to protect cargo*—Rodgers v. Bouker Contracting Co. (1904), 134 Fed. Rep. 702. *Leakage of oil*—The Persiana (1911), 185 Fed. Rep. 396, 107 C. C. A. 416, reversing 156 Fed. Rep. 1019. *Failure to close ventilators*—The Hudson (1909), 172 Fed. Rep. 1005. *Failure to keep lookout*—The Rosedale (1898), 88 Fed. Rep. 324, affirmed 92 Fed. Rep. 1021, 35 C. C. A. 167. *Failure to close sea valve*—Sun Co. v. Healy (1908), 163 Fed. Rep. 48, 89 C. C. A. 300. *Failure to use pumps*—The Merida (1901), 107 Fed. Rep. 146, 46 C. C. A. 208. *Injury to goods while taking in fresh water*—The Wildcroft (1903), 134 Fed. Rep. 631, affirmed 201 U. S. 378, 26 Sup. Ct. Rep. 467, 50 L. Ed. 794. *Failure to open sluices during storm*—The Sandfield (1898), 92 Fed. Rep. 663, 34 C. C. A. 612. *Position of ship in anchor*—The Etona (1894), 64 Fed. Rep. 880, affirmed 71 Fed. Rep. 895. *Injury to cargo while unloading*—The Germanic (1905), 196 U. S. 589, 25 Sup. Ct. Rep. 317, 49 L. Ed. 610, affirming 124 Fed. Rep. 1, 59 C. C. A. 521. *Injury to cargo while lying at dock during winter*—The Richard Winslow (1895), 67 Fed. Rep. 259, affirmed 71 Fed. Rep. 426. *Repairs to ship*—The Guadeloupe (1899), 92 Fed. Rep. 670; Corsar v. Spreckles & Bros. Co. (1905), 141 Fed. Rep. 260, 72 C. C. A. 378.

**BURDEN OF PROOF:** *Seaworthiness of vessel*—The Southwark (1903), 191 U. S. 1, 23 Sup. Ct. Rep. 1, 48 L. Ed. 65; The River Meander (1913), 209 Fed. Rep. 931, affirmed 240 Fed. Rep. 1022; The Oneida (1904), 128 Fed. Rep. 687, 63 C. C. A. 239; writ of certiorari denied, 194 U. S. 632, 48 L. Ed. 1159, 24 Sup. Ct. Rep. 856; The Wildcroft (1906), 201 U. S. 378, 26 Sup. Ct. Rep. 467, 50 L. Ed. 794; Bradley v. Lehigh V. Rd. Co. (1907), 153 Fed. Rep. 350, 82 C. C. A. 426, affirming 145 Fed. Rep. 569; The Ninta (1907), 156 Fed. Rep. 512; Steamship Wellesley Co. v. Hooper (1911), 185 Fed. Rep. 753, 108 C. C. A. 71; The Patria (1909), 132 Fed. Rep. 971, 68 C. C. A. 397, affirming 125 Fed. Rep. 425; The La Kroma (1905), 138 Fed. Rep. 936. *Cause of damage to goods in general*—The Patria, supra; The La Kroma, supra; The Folmina (1909), 212 U. S. 354, 29 Sup. Ct. Rep. 363, 53 L. Ed. 546, on certificate from the Circuit Court of Appeals, 153 Fed. Rep. 364, 82 C. C. A. 440. *Loading of vessel*—The Culima (1897), 82 Fed. Rep. 665; The Dolbardorn Castle (1914), 212 Fed. Rep. 565; Lazarus v. Barber (1905), 136 Fed. Rep. 534, 69 C. C. A. 310. *Perils of navigation*—Stern v. Fernandez (1915), 222 Fed. Rep. 42, 137 C. C. A. 680; The Rappahannock (1911), 184 Fed. Rep. 291, 107 C. C. A. 74, reversing 173 Fed. Rep. 829. *Damage by sea water*—The Folmina, supra. *Damage from excepted risk*—The Presque Isle (1905), 140 Fed. Rep. 202. *Negligence of vessel*—The Koranna (1914), 214 Fed. Rep. 172. *Competency of master*—The Cygnet (1903), 126 Fed. Rep. 742, 61 C. C. A. 348.

2. The Indrapura (1910), 178 Fed. Rep. 591, affirmed 190 Fed. Rep. 711.
3. The Irrawaddy (1898), 171 U. S. 187, 18 Sup. Ct. Rep. 831, 43 L. Ed. 130.
4. Benner Line v. Pendleton (1914), 217 Fed. Rep. 497, 133 C. C. A. 449, affirmed 246 U. S. 353, 62 L. Ed. 770, 38 Sup. Ct. Rep. 330; The Germanic (1903), 124 Fed. Rep. 1, 69 C. C. A. 521.



2009-K. DUTY OF SHIP OWNER TO ISSUE BILL OF LADING STATING NATURE  
AND CONTENTS OF SHIPMENT.

Section 4 of the Harter Act<sup>1</sup> provides as follows:

That it shall be the duty of the owner or owners, masters, or agent of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to issue to shippers of any lawful merchandise a bill of lading, or shipping document, stating, among other things, the marks necessary for identification, number of packages, or quantity, stating whether it be carrier's or shipper's weight, and apparent order or condition of such merchandise or property delivered to and received by the owner, master, or agent of the vessel for transportation, and such document shall be prima facie evidence of the receipt of the merchandise therein described.

Section 7 of the Harter Act provides that the above provisions of Section 4 of the Act shall not apply to the transportation of live animals.<sup>2</sup>

1. Harter Act, Section 4. (27 Stat. L. 445.)

*EFFECT OF CHARTER PARTY:* Hansen v. American Trading Co. (1913), 208 Fed. Rep. 884, 126 C. C. A. 44.

*EFFECT OF FALSE BILL OF LADING:* The Isola Di Procida (1902), 124 Fed. Rep. 942.

*PASSENGER TICKET:* The Kensington (1902), 183 U. S. 263, 22 Sup. Ct. Rep. 102, 46 L. Ed. 190.

2. Harter Act, Section 7. (27 Stat. L. 446.)

2009-L. PENALTY FOR VIOLATION OF THE PROVISIONS OF THE "HARTER  
Act."

Section 5 of the Harter Act<sup>1</sup> provides as follows:

That for a violation of any of the provisions of this act the agent, owner, or master of the vessel guilty of such violation, and who refuses to issue on demand the bill of lading herein provided for, shall be liable to a fine not exceeding two thousand dollars. The amount of the fine and costs for such violation shall be a lien upon the vessel, whose agent, owner, or master is guilty of such violation, and such vessel may be libeled therefor in any district court of the United States, within whose jurisdiction the vessel may be found. One-half of such penalty shall go to the party injured by such violation and the remainder to the Government of the United States.

1. Harter Act, Section 5. (27 Stat. L. 446.)

*ACTION LIMITED TO OWNER OF PROPERTY SHIPPED:* The Minnehaha (1902), 114 Fed. Rep. 672.

*VIOLATION OF STATUTE AND INDICTABLE OFFENSE:* United States v. Cobb (1906), 163 Fed. Rep. 791.

2009-M. EXISTING LAWS NOT REPEALED.

Section 6 of the Harter Act<sup>1</sup> provides as follows:

That this act shall not be held to modify or repeal sections forty-two hundred and eighty-one, forty-two hundred and eighty-two and forty-two hundred and eighty-three of the Revised Statutes of the United States, or any other statute defining the liability of vessels, their owners, or representatives.

1. Harter Act, Section 6. (27 Stat. L. 446.)

*RELATION TO SECTION THREE:* The Viola (1893), 59 Fed. Rep. 632.

2009-N. CERTAIN SECTIONS OF "HARTER ACT" INAPPLICABLE TO TRANS-  
PORTATION OF LIVE STOCK.

Section 7 of the Harter Act<sup>1</sup> provides as follows:

Sections one and four of this act shall not apply to the transportation of live animals.

1. Harter Act, Section 7. (27 Stat. L. 446.)

**2010. Liability of connecting carriers under Section 20 of the Act.****2010-A. LIABILITY OF CONNECTING CARRIERS IN GENERAL.**

The "Carmack Amendment" to the "Hepburn Act" makes "any carrier receiving property for transportation from a point in one State to a point in another State" liable for loss caused by itself or by connecting carriers, and the shipper, may, therefore, sue an intermediate carrier receiving the goods, and is not obliged to institute action against the initial carrier.<sup>1</sup> Although the "Carmack Amendment" renders the initial carrier liable for loss or damage to interstate shipments caused by its own or connecting line, the connecting carrier is also liable for the damage resulting from its negligence, and there is still a presumption that the last carrier caused the injury.<sup>2</sup>

The initial and connecting carriers are jointly liable for loss or damage occurring on the line of the connecting carrier, but no recovery can be had of the connecting carrier for loss or damage taking place, without its negligence, on the initial carrier's line.<sup>3</sup> A connecting carrier is not liable for any negligence of the initial carrier.<sup>4</sup> The intermediate carrier is not liable for delay of the initial carrier in the absence of partnership relations between such carriers.<sup>5</sup>

A railroad receiving potatoes from a steamship company to which the shipper had delivered them, and furnished the car in which they were loaded for interstate shipment, and negligently failing to prepare for such shipment so that the potatoes were damaged, was liable under the "Carmack Amendment."<sup>6</sup>

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1. *St. Louis S. W. Ry. Co. of Texas v. Ray* (1910), 127 S. W. 281.
  2. *Gibson & Draughn v. Little Rock & H. S. W. Ry. Co.* (1910), 124 S. W. 1033; *Manborn & Co. v. Louisville & N. Rd. Co.* (1916), 87 S. E. 37; *Coate Bros. v. New Orleans Terminal Co.* (1916), 72 So. 678.
  3. *Otrich v. St. Louis, I. M. & S. Ry. Co.* (1911), 134 S. W. 665.
  4. *St. Louis, I. M. & S. Ry. Co. v. Davis* (Ark. 1916), 185 S. W. 478; *Knapp v. Minneapolis, St. P. & S. S. M. Ry. Co.* (1916), 159 N. W. 81; *Utz v. Chicago, B. & Q. Rd. Co.* (1918), 208 S. W. 640.
  5. *Missouri, K. & T. Ry. Co. of Texas v. Stark Grain Co.* (1911), 103 Tex. 542, 13 S. W. 410.
  6. *Aydlett v. Norfolk-S. Rd. Co.* (N. C. 1916), 89 S. E. 1000.

**2010-B. LIABILITY OF CONNECTING CARRIER MEASURED BY ORIGINAL CONTRACT OF SHIPMENT.**

The liability of any carrier in the route over which the articles were routed, for loss or damage, is that imposed by Section 20 of the Act as measured by the original contract of shipment so far as it is valid under the Act.<sup>1</sup>

The connecting carrier is not relieved from liability by the "Carmack Amendment," but the bill of lading required to be issued by the initial carrier upon an interstate shipment governs the entire transportation, and thus fixes the obligations of all participating car-



riers to the extent that the terms of the bill of lading are applicable and valid.<sup>2</sup>

1. *Kansas City S. Ry. Co. v. Carl* (1913), 227 U. S. 639, 57 L. Ed. 683, 687, 33 Sup. Ct. Rep. 391.
2. *Georgia F. & A. Ry. Co. v. Blish Milling Co.* (1916), 241 U. S. 190, 36 Sup. Ct. Rep. 541, 60 L. Ed. 948, 951; citing, *Kansas City S. Ry. Co. v. Carl* (1913), 227 U. S. 639, 33 Sup. Ct. Rep. 391, 57 L. Ed. 683, 686; *Adams Express Co. v. Croninger* (1913), 226 U. S. 491, 33 Sup. Ct. Rep. 148, 57 L. Ed. 314, 320; *Cleveland, C. C. & St. L. Ry. Co. v. Dettlebach* (1916), 239 U. S. 588, 36 Sup. Ct. Rep. 177, 60 L. Ed. 453; *Southern Ry. Co. v. Prescott* (1916), 240 U. S. 632, 36 Sup. Ct. Rep. 469, 60 L. Ed. 837; *Northern P. Ry. Co. v. Wall* (1916), 241 U. S. 87, 36 Sup. Ct. Rep. 493, 60 L. Ed. 905.

#### 2010-C. CONTRACT OF INITIAL CARRIER INURES TO THE BENEFIT OF SUCCEEDING CARRIERS.

Any limitation of liability contained in a contract made by the initial carrier of an interstate shipment for the benefit of itself and connecting carriers which would be valid in its own behalf, under Section 20 of the Act, making the initial carrier liable for loss or damage occurring anywhere *en route*, will likewise inure to the benefit of any succeeding carrier in the chain of transportation when sued for loss or damage.<sup>1</sup>

1. *Kansas City S. Ry. Co. v. Carl* (1913), 227 U. S. 639, 57 L. Ed. 683, 687, 33 Sup. Ct. Rep. 391.

#### 2010-D. LIABILITY OF CONNECTING CARRIERS FOR LOSS, DAMAGE, OR INJURY TO PROPERTY TRANSPORTED IS SAME AS THAT OF INITIAL CARRIER.

Section 20 of the Interstate Commerce Act provides that the initial carrier shall be liable for all loss or damage "caused by it," but that section as a whole shall not affect "any remedy or right of action" which the shipper shall have "under the existing law." The phrase "existing law" means existing law as understood in the Federal courts and excludes changes made by State statutes. A connecting or terminal carrier's liability is subject to the same rules as the initial carrier's liability.<sup>1</sup>

In *Georgia, F. & A. Ry. Co. v. Blish Milling Co.*<sup>2</sup> the United States Supreme Court, per Mr. Justice Hughes, stated: "The first contention is made by repeated decisions of this court. The connecting carrier is not relieved from liability by the Carmack amendment, but the bill of lading required to be issued by the initial carrier upon an interstate shipment governs the entire transportation, and thus fixes the obligations of all participating carriers to the extent that the terms of the bill of lading are applicable and valid. 'The liability of any carrier in the route over which the articles were routed, for loss or damage, is that imposed by the act as measured by the original contract of shipment, so far as it is valid under the act.' *Kansas City Southern R. Co. v. Carl*, 227 U. S. 639, 648, 57 L. Ed. 683, 686, 33 Sup. Ct. Rep. 391. See *Adams Exp. Co. v. Croninger*, 226 U. S. 491, 507, 508, 57 L. Ed. 314 320, 321, 44 L. R. A. (M. S.) 257, 33 Sup. Ct. Rep. 149; *Cleveland, C. C. & St. L. R. Co. v. Dettlebach*, 239 U. S. 588, 591. *ante*, 453, 456, 36 Sup. Ct. Rep. 177; *Southern R. Co. v. Prescott*, 240 U. S. 632, 637, *ante*, 836, 839, 36 Sup. Ct. Rep. 469; *Northern P. R. Co. v. Wall*, decided April 24, 1916 [241 U. S. 98, *ante*, 905, 36 Sup. Ct. Rep. 493]."

1. *Lysaght, Ltd. v. Lehigh V. Rd. Co.* (1918), 254 Fed. Rep. 351, 353, affirmed, *Lehigh V. Rd. Co. v. Lysaght, Ltd.* (1921), 271 Fed. Rep. 906, 909, citing, *Georgia, F. & A. Ry. Co. v. Blish Milling Co.* (1916) 241 U. S. 190, 36 Sup. Ct. Rep. 541, 60 L. Ed. 948.
2. *Georgia, F. & A. Ry. Co. v. Blish Milling Co.* (1916), 60 L. Ed. 948, 951, 241 U. S. 190, 36 Sup. Ct. Rep. 541.

2010-E. LIABILITY OF INTERMEDIATE CARRIER FOR LOSS, DAMAGE, OR DELAY  
NOT OCCURRING ON ITS OWN LINE.

Under the "Carmack Amendment" an intermediate carrier cannot be sued for delay in transportation of an interstate shipment of live stock, where the delay was not caused on its line, regardless of whether or not it had issued a bill of lading; the purpose of the amendment being to secure simplicity in the transportation of freight carried by several common carriers by localizing the responsible carrier.<sup>1</sup>

The "Carmack Amendment" denied to the initial carrier the privilege it formerly had to contract against its liability as agent for connecting carriers, and created an obligation on its part to carry to destination an interstate shipment, though no contract was entered into between the parties, so as to render it liable for loss or damage occasioned by connecting carrier. However, the "Carmack Amendment" does not make a connecting carrier agent of the initial carrier or render it liable for loss occasioned by another connecting carrier, for which it is in any way accountable primarily.<sup>2</sup>

1. *Hudson v. Chicago, St. P. M. & O. Ry. Co.* (1915), 226 Fed. Rep. 38.

2. *McGinn v. Oregon-Washington Rd. & Nav. Co.* (1920), 265 Fed. Rep. 81. Writ of certiorari granted, *Oregon-Washington Rd. & Nav. Co. v. McGinn* (1920), 65 L. Ed. 209, 41 Sup. Ct. Rep. 148, — U. S. —.

2010-F. CONNECTING CARRIER CANNOT MODIFY THE TERMS OF THE SHIPPING  
CONTRACT.

Where, in an interstate shipment, the initial carrier issues a bill of lading, a connecting carrier over whose lines the shipment passes on the way to its destination, cannot enter into a new contract with the shipper, by which the liability of such carrier is less than in the case of damage to property so being carried over its line as a link in the interstate transportation.<sup>1</sup>

1. *Missouri, O. & G. Ry. Co. v. French* (Okla. 1915), 152 Pac. 591.

2010-G. SHIPPER CANNOT SUE A CONNECTING CARRIER TO RESTRAIN RE-  
COVERY OF FREIGHT CHARGES TO ENFORCE A SET-OFF.

In *Johnson-Brown v. Delaware, L. & W. Rd. Co.*<sup>1</sup> Mr. District Judge Speer stated: "But, if properly served, the bill cannot be maintained. It is based upon a claim that he has a right to set-off damages to his melons against the freight charges of the defendant company. Now the action for freight charges was not brought against the initial carrier. Nor is it alleged in the bill that the injury sustained by the fruit occurred on the line of the defendant company. The injury resulted from delay in the shipment, but the bill does not disclose which of the succeeding or connecting carriers on whose line the delay occurred. Before the enactment of the controlling legislation of Congress on this subject, there was—

"Such a diversity of legislative \* \* \* holding that it was practically impossible for a shipper engaged in a business that extended beyond the confines of his own state, or for a carrier whose lines were extensive, to know without considerable investigation and trouble, and even then oftentimes with but little certainty, what would be the carrier's actual responsibility as to goods delivered to it for transportation from one state to another. The congressional action has made an end to this diversity; for the national law is paramount and supersedes all state laws as to the rights and liabilities and exemptions created by such transactions." Opinion of Mr. Justice Lurton in *Adams Express Co. v. Croninger*, 226 U. S. 505, 33 Sup. Ct. Rep. 151, 57 L. Ed. 314, 44 L. R. A. (N. S.) 257.



"The language used by the learned justice was taken from the opinion of Mr. Justice Powell in *Southern Pacific Co. v. Crenshaw*, 5 Ga. App. 675, 687, 63 S. E. 865. Associate Justice Lurton continues:

"That the legislation supersedes all the regulations and policies of a particular state upon the same subject results from its general character. It embraces the subject of the liability of the carrier under a bill of lading which he must issue, and limits his power to exempt himself by rule, regulation, or contract. Almost every detail of the subject is covered so completely that there can be no rational doubt but that Congress intended to take possession of the subject and supersede all state regulations with reference to it."

"See, also, *Texas & Pac. Ry. v. Abilene Cotton Mills*, 204 U. S. 426, 27 Sup. Ct. 350, 51 L. Ed. 553, 9 Ann. Cas. 1075.

"Justice Lurton continues:

"To construe this proviso as preserving to the holder of any such bill of lading any right or remedy which he may have had under existing federal law at the time of his action gives to it a more rational interpretation than one which would preserve rights and remedies under existing state laws, for the latter view would cause the proviso to destroy the act itself. One illustration would be a right to a remedy against a succeeding carrier, in preference to proceeding against a primary carrier for a loss or damage incurred upon the line of the former. The liability of such succeeding carrier in the route would be that imposed by this statute, and for which the first carrier might have been made liable."

"Construing this controlling decision, we must reach the conclusion that the plaintiff's suit should have been brought against the initial carrier. That is the effect of what is widely known as the Carmack Amendment. In order to avoid the great confusion which existed on this subject, Congress, by the amendment, has afforded the shipper the most convenient means of redress from any carrier, which, by interrelation, had undertaken to transport his goods in interstate commerce. The simplicity and effectiveness of this remedy would be rendered nugatory if the shipper was at liberty to single out and sue any one or more of the succeeding carriers. The recourse of the initial carrier, if not to blame, is to adjust its loss with the succeeding carriers, which are blamable."

"Besides, the attempt in this bill to defeat the railroad company's charges for freight by the plea of recoupment has been held obnoxious to the act of Congress. In *Chicago & Northwestern R. R. Co. v. Wm. S. Stein Co.* (D. C.), 233 Fed. 716, it was held that in an action by an interstate carrier for freight charges a shipper cannot set off a claim for injuries to the goods; for the freight can be paid only in cash, and such set-offs would open the door to fraud and discrimination. The same doctrine was held and elaborated in the case of *Illinois Central R. R. v. W. L. Hooper & Sons* (D. C.) 233 Fed. 135.

"For these reasons, or either of them, the bill must be dismissed."

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1. *Johnson-Brown Co. v. Delaware, L. & W. Rd. Co.* (1917), 239 Fed. Rep. 590, 591.

## 2011. Liability of the terminal carrier under Section 20 of the Act.

### 2011-A. LIABILITY OF THE TERMINAL CARRIER AS AN INSURER.

The common-law liability of the carrier as an insurer was not changed with respect to a loss occurring on its own line by the provisions of the "Carmack Amendment" to Section 20 of the Act, making the initial carrier of an interstate shipment liable for any loss, damage, or injury "caused by it" or by any other carrier to which the property may be delivered.<sup>1</sup> In delivering the opinion of the Court in the case of *Cincinnati, N. O. & T. P. Ry. Co. v. Rankin*<sup>2</sup> Mr. Justice McReynolds

stated: "Counsel concede liability of a common carrier under the long-recognized common-law rule not only for negligence, but also as an insurer, and that unless the Carmack amendment has changed this rule, the railway is responsible for damages not exceeding specified value. But they insist that in *Adams Exp. Co. v. Croninger*, 226 U. S. 491, 57 L. Ed. 314, 44 L. R. A. (N. S.) 257, 33 Sup. Ct. Rep. 148, we held this amendment restricts a carrier's liability to loss 'caused by it.' And, consequently, they say, the trial court erred when it charged: 'In this case the carrier is held to the highest degree of care for the safe transportation of the animals.'

"Construing the Carmack amendment, we said through Mr. Justice Lurton in the case cited (pp. 506, 507): 'The liability thus imposed is limited to "any loss, injury, or damage caused by it or a succeeding carrier, to whom the property may be delivered,"' and plainly implies a liability for some default in its common-law duty as a common carrier.' Properly understood, neither this nor any other of our opinions holds that this amendment has changed the common-law doctrine theretofore approved by us in respect of a carrier's liability for loss occurring on its own line."

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1. *Cincinnati, N. O. & T. P. Ry. Co. v. Rankin* (1916), 241 U. S. 319, 36 Sup. Ct. Rep. 555, 60 L. Ed. 1022; *Southern Ry. Co. v. Morris* (Ga. 1918), 95 S. E. 284; *Deaver-Geter Co. v. Southern Ry. Co.* (S. C. 1913), 75 S. E. 709.
  2. *Ibid.*

#### 2011-B. LIABILITY OF TERMINAL CARRIER FOR ITS OWN WRONG.

A terminal carrier is not relieved from liability for misdelivering an interstate shipment by the provisions of the "Carmack Amendment" of June 29, 1906, to the Act of February 4, 1887, Section 20, making the initial carrier liable for loss or damage occurring anywhere *en route*, with a remedy over against the carrier at fault, but the bill of lading which the initial carrier under that statute must issue governs the entire transportation, and thus fixes the obligations of all participating carriers to the extent that the terms of the bill of lading are applicable and valid.<sup>1</sup>

The "Carmack Amendment" does not deprive a shipper of his common-law action against the intermediate or final carrier nor prevent liability from attaching to such carriers against whom a default can be established by proper evidence.<sup>2</sup>

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1. *Georgia, F. & A. Ry. Co. v. Blish Milling Co.* (1916), 241 U. S. 190, 36 Sup. Ct. Rep. 541, 60 L. Ed. 948.
  2. *Tradewell v. Chicago & N. W. Ry. Co.* (Wis. 1912), 136 N. W. 794; *Illinois C. Rd. Co. v. Mahon Live Stock Co.* (Miss. 1916), 71 So. 802; *Mewborn & Co. v. Louisville & N. Rd. Co.* (N. C. 1915), 87 S. E. 37; *Southern Express Co. v. Sakes* (Ala. 1915), 160 Ala. 621, 49 So. 392; *Louisville & N. Rd. Co. v. Linn* (Ala. 1916), 71 So. 338.

#### 2011-C. LIABILITY OF TERMINAL CARRIER AS WAREHOUSEMAN.

The liability of the terminal carrier in an interstate shipment for a loss due to its negligence while the goods were in its possession as warehouseman at the place of destination must be regarded as controlled by a limitation to an agreed valuation made to adjust the rate contained in the uniform bill of lading issued by the initial carrier, in view of the provisions of the "Hepburn Act" of June 29, 1906,



enlarging the definition of the term "transportation" so as to include all services rendered in connection therewith, and of a provision of the bill of lading that "every service to be performed hereunder" is subject to all the conditions therein contained.<sup>1</sup> Mr. Justice Pitney in delivering the opinion of the United States Supreme Court, in the case of *Cleveland, C. C. & St. L. Ry. Co. v. Dettlebach*<sup>2</sup>, stated: "The court whose judgment we have here under review sustained a judgment rendered by an inferior state court in favor of Dettlebach and against the railway company for the market value of certain goods which, having been shipped in interstate commerce, were lost through the negligence of the railway company (the terminal carrier) while in its possession as warehouseman at the place of destination; overruling the contention that, because of a limitation of liability agreed upon by plaintiff's agent in consideration of a reduced rate of freight, and contained in the bill of lading that was issued by the initial carrier, and by force of the provisions of the interstate commerce act and its amendments, especially the Hepburn act of 1906 \* \* \* the recovery ought to be limited in accordance with the stipulation. This question, it may be observed, as affecting the warehouseman's responsibility, was not passed upon in *Boston & M. R. Co. v. Hooker*, 233 U. S. 97, 109, 58 L. ed. 868, 874, L. R. A. 1915B, 450, Ann. Cas. 1915D, 593.

"The facts are as follows: Dettlebach, the plaintiff, on September 18, 1911, shipped certain packages of merchandise, described as household goods, over the Chicago, Burlington, & Quincy Railway and connecting lines from Denver, Colorado, consigned to his wife at Cleveland, Ohio. They were received for transportation under the terms of a bill of lading, prepared in the form approved and recommended by the Interstate Commerce Commission in its report of June 27, 1908 (14 Inters. Com. Rep. 346, 352; 22 Ann. Rep. I. C. C. 1908, p. 57), which contained the following provision:

" 'It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, *that every service to be performed hereunder* shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof), and which are agreed to by the shipper and accepted for himself and his assigns.'

"Among the conditions printed upon the back were the following:

" 'Sec. 3.... The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property...at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence. \* \* \*'

\* \* \* \* \*

" 'Sec. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only. \* \* \*'

“Upon the face of the bill of lading was the following declaration signed by plaintiff’s agent: ‘I hereby declare the valuation of the property shipped under this bill of lading does not exceed \$10 per cwt.’

“The court found as a fact that the shipper, by consenting to the limitation, received a consideration in the shape of a substantial reduction in the freight rate, and that this supported the agreement to limit the company’s liability. No question was made but that the agreement was in accordance with the filed tariff.

“The goods thus shipped were transported by the initial carrier to the junction between its line and that of defendant, and transported by the latter company to destination, where they arrived on September 27. They were not called for by the consignee, and remained in defendant’s possession as warehouseman until November 1, 1911, when, through its negligence, certain of the goods, of the market value of \$2,792, were lost.

“This action having been brought to recover the value of the goods lost, and the claim of Federal right already mentioned having been made and overruled, a verdict and judgment went against defendant for the market value of the goods, and this was affirmed by the court of appeals, eighth district, state of Ohio. The supreme court of the state declined to review the judgment. The case comes here under Sec. 237, Judicial Code (36 Stat. at L. 1156, chap. 231, Comp. Stat. 1913, Sec. 1214).

“It is no longer open to question that if the loss had occurred in the course of transportation upon defendant’s line, the limitation of liability agreed upon with the initial carrier, as this was, for the purpose of securing the lower of two rates of freight, would have been binding upon plaintiff, in view of the Carmack amendment. *Adams Exp. Co. v. Croninger*, 226 U. S. 491, 509, 57 L. ed. 314, 321, 44 L. R. A. (N. S.) 257, 33 Sup. Ct. Rep. 148; *Kansas City Southern R. Co. v. Carl*, 227 U. S. 639, 648, 654, 57 L. Ed. 683, 686, 689, 33 Sup. Ct. Rep. 391; *Missouri, K. & T. R. Co. v. Harriman*, 227 U. S. 657, 668, 57 L. ed. 690, 696, 33 Sup. Ct. Rep. 397. The question is whether the limitation of liability may be deemed to have spent its force upon the completion of the carrier’s service as such, or must be held to control, also, during the ensuing relation of warehouseman. The court of appeals, recognizing the question as one of difficulty, reasoned thus:

“‘To occupy this twofold relation is of advantage to the company. As soon as the company can occupy it by replacing with it its former relation as a common carrier, it obtains the benefit of the rule of ordinary care instead of the higher degree of vigilance which the law charges upon carriers for hire. And the company is further advantaged by an early shifting of its status as carrier to that of warehouseman, through its right in the latter capacity to charge for the storage of consigned goods, from the time when its relation to them as carrier ceases.’

“The court considered that the declaration of value stamped upon the bill of lading, and signed by plaintiff’s agent, carried no suggestion that it should inure to the advantage of a warehouseman after becoming inert for the relief of the carrier, and that the custody and protection of the goods as warehouseman is a distinct service from



that of their transportation, and for it additional compensation may be charged; proceeding as follows: 'The additional compensation is not at all diminished in this case because of the agreement of limitation of liability. The reduction in the rate of carriage which can be used as a consideration to support that agreement is no consideration for a like limitation of the liability as warehouseman, because there is no reduction in warehousing charges provided or stipulated for in the transaction. It is not easy to see why the consideration—not a large one—which is permitted to support the agreement to a limited liability on the part of the carrier should do double duty by serving also to uphold a like limitation of the liability of a warehouseman,—the latter not agreeing to abate any part of proper storage charges. To so extend the contract of release would give an advantage to the warehouseman, but none to the owner. To allow that consideration would be to permit the carrier to cast off his obligation as carrier and take up a lighter burden, while he denies to the shipper all right to share in the benefit of the changed relation. The rate which the warehouseman may charge for storage remains unaffected by the release of liability as a carrier. The warehouseman could collect the reasonable value of his service whether the limitation of the carrier's liability was or was not stipulated. He could not be compelled to take less because of the stipulation. He could collect no more if the stipulation had not been made.'

"We recognize the cogency of the reasoning from the standpoint of the common-law responsibility of a railway company as carrier and as warehouseman. But we have to deal with the effect of an express contract, made for the purpose of interstate transportation, and this must be determined in the light of the act of Congress regulating the matter. The question is Federal in its nature. *Missouri, K. & T. Ry. Co. v. Harriman*, 227 U. S. 657, 672, 57 L. ed. 690, 698, 33 Sup. Ct. Rep. 397; *Atchison, T. & S. F. R. Co. v. Robinson*, 233 U. S. 173, 180, 58 L. Ed. 901, 905, 34 Sup. Ct. Rep. 556.

"The provision that we have quoted from the contract is to the effect that 'every service to be performed thereunder' is subject to the conditions contained in it. One of these conditions is, in substance, that where a valuation has been agreed upon between the shipper and the carrier, such value shall be the maximum amount for which any carrier may be held liable, whether or not the loss or damage occurs from negligence. And that this, as a mere matter of construction, applies to the relation of warehouseman as well as to the strict relation of carrier, is manifest from the further provision that property not removed within forty-eight hours after notice of arrival may be kept 'subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only.' Thus, 'any loss or damage for which any carrier is liable' includes not merely the responsibility of carrier, strictly so called, but 'carrier's responsibility as warehouseman' also.

"And this is quite in line with the letter and policy of the commerce act, and especially of the amendment of June 29, 1906, known as the Hepburn act, \* \* \* which enlarged the definition of the term 'transportation' (this, under the original act, included merely 'all instruments of shipment or carriage') so as to include 'cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for

the use thereof *and all services in connection with* the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, *storage, and handling of property transported*; and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish *such transportation* upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto. All charges made for *any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith*, shall be just and reasonable; and every unjust and unreasonable charge for *such services or any part thereof* is prohibited and declared to be unlawful.'

"From this and other provisions of the Hepburn act it is evident that Congress recognized that the duty of carriers to the public included the performance of a variety of services that, according to the theory of the common law, were separable from the carrier's service as carrier, and, in order to prevent overcharges and discriminations from being made under the pretext of performing such additional services, it enacted that, so far as interstate carriers by rail were concerned, the entire body of such services should be included together under the single term 'transportation,' and subjected to the provisions of the act respecting reasonable rates and the like. The recommendation of the Interstate Commerce Commission for the adoption of the uniform bill of lading was of course made in view of this legislation, and while not intended to be and not in law binding upon the carriers, it is entitled to some weight. It recognizes—whether correctly or not is a question not now presented—the right of the carrier to make a charge, the amount of which has not been definitely fixed in advance, for storage as warehouseman in addition to the charge for transportation; but at the same time it recognizes that a valuation lower than the actual value may be agreed upon between the shipper and the carrier, or determined by the classification or tariffs upon which the rate is based; and it is a necessary corollary that what should be a reasonable charge for storage would be determined in the light of all the circumstances, including the valuation placed upon the goods.

"We conclude that, under the provisions of the Hepburn act and the terms of the bill of lading, the valuation placed upon the property here in question must be held to apply to defendant's responsibility as warehouseman.

"Judgment reversed, and the cause remanded for further proceedings not inconsistent with this opinion."

The case of *Michigan C. Rd. Co. v. Owen Co.*<sup>3</sup> involved the question of the effect of placement and notice to consignee on the liability of the carrier. Mr. Justice McKenna, in delivering the opinion of the United States Supreme Court, stated: "Action in the municipal court of Chicago for damages for loss on several shipments of grapes, four car lots, shipped in sound and merchantable condition.

"On receipt of the shipments, bills of lading were issued. The total loss is alleged to have been 126 baskets of grapes of the value of \$23.30. The municipal court found against plaintiff (respondent here, and it will be so, referred to). The judgment was reversed by the appellate court, first district of the state, and judgment awarded re-



spondent, which was affirmed by the supreme court of the state, to which an appeal was granted because the court of appeals considered that the case involved questions of importance 'on account of principal and collateral interests' which should be passed upon by the supreme court.

"Our review is concerned with questions of law; the facts are undisputed. It is stipulated that the cars were transported by the railroad company from their respective points of origin to Chicago, arriving there at different days and times of the days. Upon the arrival of each car it was placed on a public delivery track of the railroad company and notice thereof given. Respondent accepted each car, breaking the seals thereof. And it is stipulated that at the time respondent started to unload, each of the cars contained the number of baskets and pounds of grapes received for transportation. The loss, whatever there was, occurred after the acceptance of the cars and their unloading had commenced, and whether the railroad company is liable therefore, and in what capacity liable,—whether as carrier or warehouseman, or at all,—is the question in the case.

"The answer depends upon the construction to be given to the first paragraph of section 5 of the bill of lading. It is as follows:

" 'Property not removed by the party entitled to receive it, within forty-eight hours exclusive of legal holidays, after notice of its arrival has been duly sent or given, may be kept in car, depot, or place of delivery of the carrier subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner, and there held at owner's risk and without liability on the part of the carrier and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.'

"Regarding the words of the section merely, they are clear enough and present no 'double sense.' But controversies have arisen and judicial judgments have divided upon them. The point of the controversies has been, and is, as to the relation of the carrier to a shipment within forty-eight hours after notice of its arrival has been duly sent or given, and the contentions upon the point are in sharp antagonism. That of respondent is that the railroad company, during the forty-eight hours, is responsible as a carrier, this relation not terminating until the expiration of that time. The contention of the railroad company is contra, and that it, the company, is neither liable as a carrier or warehouseman. Not as a carrier, because the shipment had been delivered and accepted; not as warehouseman, because no negligence has been proved against it. The supreme court decided against the contentions of the railroad company and held it liable for loss on all the shipments. As to three of them, we may say immediately, in disposition of them, respondent withdraws any claims on account of them, and confines the issue to one car, which was undoubtedly unloaded within forty-eight hours of the notice of its arrival. There is question of the other cars.

"The importance of the issue, however, still remains, although it is concerned with only 31 baskets of grapes, of the value of \$8.68, and the difficulty of its determination is indicated by the fact of the delivery

of judicial reasoning upon a like issue in other cases. And counsel have been at pains to set the cases in opposition with approving or disapproving comment of their own.

"The differences of the cases cannot be reconciled, and a review of them for the purpose of selection would manifestly extend this opinion to a great length. Their outside principle is simple enough; the bill of lading is a contract between the transportation company and him who is interested in the shipment, and legal when within the policy and edicts of the law regulating that relation.

"By recurring to section 5 of the bill of lading, it will be seen that it supposes a contingency and provides for its occurrence. It supposes that property may not be removed when it has reached destination, and is available for delivery, and two periods of time are provided for. One of forty-eight hours after notice of the arrival of the property has been sent or given. During this time there is no declaration of the relation of the railroad company to the property. The other period commences at the expiration of the first or forty-eight-hour period, during which the provision is that the property is subject 'to carrier's responsibility as warehouseman only.' The comparison has its significance and must be accounted for. Realizing this, the railroad company makes a distinction. Its contention is that where delivery has been made of the property, as, it insists, was true in the case at bar, the responsibility of the railroad company as carrier immediately ceases. If, however, it is neither delivered nor removed within forty-eight hours after notice of arrival, the responsibility of the railroad company thereafter is that of 'warehouseman only.'

"To the distinction and the contention based upon it, the supreme court of the state answered that the bill of lading provides for property 'not removed,' not to property 'delivered' or 'not delivered,' and it must be taken at its word.

"The answer puts too much emphasis upon the distinction between property removed and property delivered. The property here was not delivered; access was only given to it that it might be removed, and forty-eight hours were given for the purpose. Pending that time it was within the custody of the railroad company, the company having the same relation to it that the company acquired by its receipt and had during its transportation.

"The bill of lading is definite, as we have pointed out, in its provisions and of the time at which responsibility of the company shall be that of warehouseman, and, by necessary implication, therefore, until that responsibility attaches, that of carrier exists.

"All the elements of the case considered and assigned their persuasive force, we think the judgment of the Supreme Court should be and it is affirmed."

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1. *Cleveland, C. C. & St. L. Ry. Co. v. Dettlebach* (1916), 239 U. S. 588, 36 Sup. Ct. Rep. 177, 60 L. Ed. 453, et seq.

2. *Ibid.* It should be noted that that provision of Section 3 of the Bill of Lading involved in this case, which provides that the amount of any loss or damage for which the carrier is liable shall be computed on basis of the value of the property at time and place of shipment, is now unlawful and void under the 20th Section of the Act as amended by the Cummins Amendment of March 4, 1915.

3. *Michigan C. Rd. Co. v. Owen & Co.* (1921), — U. S. —, — Sup. Ct. Rep. —, 65 L. Ed. 690, 691.



2011-D. TERMINAL CARRIER IS BOUND BY THE CONTRACT OF THE INITIAL CARRIER.

In *McGinn v. Oregon-Washington Rd. & Nav. Co.*<sup>1</sup> the Circuit Court of Appeals, per Mr. District Judge Wolverton, stated: "But it is insisted by counsel that the defendant is liable as for failure to deliver the stock in the condition in which it was received for shipment, and is, therefore, liable for the damages sustained by the shipper. The Supreme Court, in *Georgia, Fla. & Ala. Ry. v. Blish Co.*, 241 U. S. 190, 196, 36 Sup. Ct. Rep. 541, 544 (60 L. Ed. 948), which was an action in trover to recover against the terminal company for a misdelivery, and for the value of a carload of flour which had been damaged while in transit over the lines of the connecting carrier next preceding it, in further construing the Carmack Amendment, was of the opinion, and so declared, that the statute was comprehensive enough to embrace responsibility for all losses resulting from any failure to discharge a carrier's duty as to any part of the agreed transportation, including delivery; and the court goes on to say:

"When it (the initial carrier) inserts in its bill of lading a provision requiring reasonable notice of claims 'in case of failure to make delivery,' the fair meaning of the stipulation is that it includes all cases of such failure, as well as those due to misdelivery as those due to the loss of the goods. But the provision in question is not to be construed in one way with respect to the initial carrier and in another with respect to the connecting or terminal carrier. As we have said, the latter takes the goods under the bill of lading issued by the initial carrier, and its obligations are measured by its terms (*Kansas Southern Ry. v. Carl*, 227 U. S. 639, 57 L. Ed. 683, 33 Sup. Ct. Rep. 391) and if the clause must be deemed to cover a case of misdelivery when the action is brought against the initial carrier, it must equally have that effect in the case of the terminal carrier which in the contemplation of the parties was to make the delivery. The clause gave abundant opportunity for presenting claims, and we regard it as both applicable and valid."

"So that, under the amendment, the terminal carrier is bound, by the bill of lading, and the contract of the initial carrier, to deliver as the initial carrier is bound, and is liable for any loss or damage to the property that has been occasioned through the conduct of the carriers while in transit. This leads to the conclusion that the defendant here, being a terminal carrier, is liable for the loss and injury to the stock comprised by the shipment although occasioned while it was in transit over the Oregon Short Line.

"Question is made that the form and theory of action adopted by plaintiff admit of no such relief, as it is said not to be for misdelivery, but for damages caused by the negligence of one of the connecting carriers. The form of action has the sanction of the court in *Georgia, Fla. & Ala. Ry. v. Blish Co.*, *supra*. There the action was in trover, but the court was persuaded that it should look beyond the technical denomination of the pleading and treat it as one for damages against the delivering carrier. Such is the action here not only in name, but in substance.

"Having concluded that the defendant is rendered thus liable, it is not necessary to discuss the questions presented as to whether defendant was, in effect, a partner of the initial and succeeding carriers, or is otherwise liable because of shipping and other interrelations of the several connecting carriers. Nor is it essential to decide the questions arising upon objections and exceptions made and reserved during the trial."

1. *McGinn v. Oregon-Washington Rd. & Nav. Co.* (1920), 265 Fed. Rep. 81, Writ of certiorari granted, *Oregon-Washington Rd. & Nav. Co. v. McGinn* (1920), 65 L. Ed. 209, 41 Sup. Ct. Rep. 148, — U. S. —.

2011-E. A RAILROAD HOLDING A CARLOAD SHIPMENT AS WAREHOUSEMAN BECOMES LIABLE AS A COMMON CARRIER ON RECEIPT OF FORWARDING ORDER.

In *Lehigh V. Rd. Co. v. Lysaght, Ltd.*,<sup>1</sup> the United States Circuit Court of Appeals, per Mr. Circuit Judge Ward, stated: "When the cause came on for trial before Judge Mayer, the defendant moved to dismiss on the ground that its liability was that of warehouseman, and not of carrier, which motion was denied, because overruled on demurrer by Judge Hand. Without going into the question whether the defendant waived this objection by answering over, we think it was bad in law. The goods were in course of transportation, and the delay at the Black Tom Terminal during the period that the plaintiff failed to give shipping instructions for export for either 48 hours after notice of arrival under the bill of lading or for 15 days under the tariff changed the defendant's liability to that of warehouseman, but as soon as shipping instructions were given, July 29, at 1:42 p. m., its liability as carrier to transport the goods to New York, county of New York, was reinstated. This is expressly stated by A-1 of the company's tariff. The only effect of article 8 of the tariff is to postpone the time at which demurrage begins to run. The other provisions of section 16, which give the railroad company a reasonable time within which to deliver alongside the steamer for export, in no way affect its liability as carrier or make it a warehouseman. There is nothing in the suggestion that lighterage to New York is a mere terminal service. The railroad company, having agreed to deliver at New York, would have been responsible as common carrier, if the goods had been lost or damaged while on the lighter. Judge Hand concluded his opinion on the demurrer to the complaint as follows:

"It does not, of course, follow that the defendant became a carrier at the moment of receiving the order at 1:42 P. M. For example, it might be that that was too late for delivery that evening. If so, the defendant's liability would not attach until such time as it could have commenced delivery under the conditions of the harbor. All such considerations cannot be decided upon the pleadings; they must wait for the evidence developed at the trial. It does not follow, therefore, that on Sunday, July 30th, the defendant was not still holding as a warehouseman, but it equally does not follow that it was."

"We go further, and hold that, had the case rested on the complaint and the denials of the answer, a verdict should have been directed for the plaintiff.

"The defendant contends that, because July 29 was a Saturday and July 30 a Sunday, defendant's liability as common carrier could not have reattached before the explosion. It relies upon the Sunday laws of New York and New Jersey, but the Sunday laws of neither state prohibit the giving of shipping instructions or the transportation of goods on half holidays or Sundays. See sections 24 and 25 of the New York General Construction Law (Consol. Laws, c. 22), and *Van Orden v. Simpson*, 90 Misc. Rep. 322, 153 N. Y. Supp. 134; New Jersey Compiled Statutes, vol. 3, p. 3091, par. 5, sec. 1, and page 3092, par. 7, sec. 3.

"Judge Mayer directed a verdict for the plaintiff, and the defendant has taken this writ of error to the judgment entered thereon.

"The liability of the defendant depends upon the Interstate Commerce Act and the uniform bill of lading approved by the Interstate Commerce Commission. The Act of March 4, 1915, \* \* \* amending



the Interstate Commerce Act, incorporates what is known as the Carmack amendment, which reads, so far as material in this case as follows:

"That any common carrier, railroad, or transportation company, receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; Provided, that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

"That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof."

"The defendant contends that it is not liable for any loss or damage not 'caused by it,' and alleges that this explosion was not caused by it. These words of the act were used to make the initial carrier liable for any loss or damage occurring during the whole course of transportation, whether caused by it or by a connecting carrier, though they apply, also, to each carrier as to loss or damage on its own line. *Georgia Railway Co. v. Blish Milling Co.*, 241 U. S. 190, 36 Sup. Ct. Rep. 541, 60 L. Ed. 948. Congress cannot have intended to reduce the liability of common carriers to that of ordinary bailees for their own negligence only. Happier words than 'caused by it' might have been used, but they fairly cover loss or damage for which the carrier would be liable at common law. See *Adams Express Co. v. Croninger*, 226 U. S. 491, 506, 33 Sup. Ct. Rep. 148, 57 L. Ed. 314, 44 L. R. A. (N. S.) 257; *Cincinnati, etc., R. R. Co. v. Rankin*, 241 U. S. 319, 326, 36 Sup. Ct. 555, 60 L. Ed. 1022, L. R. A. 1917A, 265.

"Counsel for the railroad company make a very interesting argument to the effect that in the time of the general European War, when the defendant was compelled to carry these dangerous agencies, an explosion like this should be treated as an act of God. We are not persuaded by it. If it be better public policy to take this step in advance (a question we will not discuss), it must be taken to Congress, and not by the courts."

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1. *Lehigh V. Rd. Co. v. Lysaght, Ltd.* (1921), 271 Fed. Rep. 906, 909, affirming, *Lysaght, Ltd. v. Lehigh V. Rd. Co.* (1918), 254 Fed. Rep. 351.

## 2012. Common carriers and transportation not subject to the provisions of Section 20 of the Act.

See "*Transportation and Common Carriers not Subject to the Jurisdiction of the Interstate Commerce Commission.*" Chapter 4, *ante*.

## 2013. Rates dependent upon a declared or released valuation, as authorized or required by the Interstate Commerce Commission.

### 2013-A. PROVISION OF THE STATUTE.

Section 20 (11) of the Interstate Commerce Act, (*as amended June 29, 1906, March 4, 1915, and August 9, 1916*), provides as follows:

*Provided, however,* That the provisions herein respecting liability for the full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation

to be unlawful and void, shall not apply, \* \* \* to property, except ordinary live stock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, as far as relates to values, be held to be a violation of Section 10 of this Act to Regulate Commerce as amended;

2013-B. LEGALITY OF RELEASED RATES PRIOR TO THE "CUMMINS AMENDMENT" OF AUGUST 9, 1916.

A carrier could, at common law, by a fair, open, just, and reasonable agreement, limit the amount recoverable by a shipper in case of loss or damage, to an agreed value, made for the purpose of obtaining the lower of two or more rates, proportionate to the amount of the risk.<sup>1</sup> A carrier could not, by a valuation agreement with a shipper, limit its liability in case of loss or damage by negligence of an interstate shipment to less than the real value thereof, unless the shipper was given a choice of rates dependent on value.<sup>2</sup>

A limitation of liability in case of loss or damage to a valuation agreed upon for the purpose of determining which of two alternative rates shall apply to a particular shipment was not forbidden by the provision in the "Carmack Amendment" of June 29, 1906, that no contract, receipt, rule, or regulation shall exempt an interstate carrier from the "liability hereby imposed."<sup>3</sup> Neither the common law nor Section 20 of the Interstate Commerce Act, as amended by the "Carmack Amendment" of June 29, 1906, which makes an interstate carrier liable for loss or damage caused by it or a connecting carrier to property in shipment, and prohibits contracts exempting it from such liability, makes illegal or invalid a contract fairly entered into fixing a valuation of the property for which the carrier shall be liable in case of loss.<sup>4</sup>

The right of the carrier to initiate its rates and to consider value of the property tendered for transportation as an element in determining the classification thereof or the rate applicable thereto was not denied by the first "Cummins Amendment" of March 4, 1915.<sup>5</sup>

Therefore, prior to the enactment of the "Cummins Amendment" of August 9, 1916, carriers had the right to initiate rates predicated upon released valuation and the effect of the "Cummins Amendment" of August 9, 1916, was to permit carriers to establish and maintain rates dependent upon a declared value on all property except ordinary live stock where such rates are expressly authorized or required by order of the Interstate Commerce Commission.

In *Adams Express Co. v. Croninger*<sup>6</sup> (decided January 6, 1913), the United States Supreme Court held as follows: "Inquiry as to the actual value of an interstate shipment is not vital to the fairness, under the Carmack amendment of June 29, 1906, to the act of February 4, 1887, Section 20, of a stipulation in the carrier's receipt, limiting its liability to the agreed or declared value, where such receipt, as well as the published rates on file with the Interstate Commerce Commission, plainly show that the rate charged was based upon value.

"A shipper's knowledge that the carrier's rate was based upon the value of the shipment is to be presumed where this plainly appears



from the terms of the bill of lading and from the published rates on file with the Interstate Commerce Commission.

"A stipulation in a carrier's receipt, limiting its liability to an agreed or declared value, made to adjust the rate, is not forbidden by the provision of the Carmack Amendment of June 29, 1906. \* \* \* that 'no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company, from the liability hereby imposed.'"

In *Chicago, B. & Q. Rd. Co. v. Miller*<sup>7</sup> (decided January 6, 1913), the United States Supreme Court held as follows: "The shipper and carrier of an interstate shipment are not forbidden to contract to limit the carrier's liability to an agreed value, made to adjust the rate, by the provisions of the Carmack amendment of June 29, 1906, to the Act of February 4, 1887, prohibiting exemptions from the liability imposed by that act."

In *Wells, Fargo & Co. v. Neiman-Marcus Co.*<sup>8</sup> (decided February 24, 1913), the United States Supreme Court held as follows: "The shipper's acceptance of an express company's receipt containing a recital that the company 'is not to be held liable beyond the sum of \$50, at not exceeding which sum said property is hereby valued, unless a different value is hereinabove stated,' is, where no different value was declared, as much a declaration that the value did not exceed that sum as though so stated upon inquiry, as contemplated by the express company's rules, and is sufficient to justify the application of the doctrine that such a company, when its rates are graduated by value, may, under the Carmack amendment of June 29, 1906, \* \* \* limit its liability for the loss of an interstate shipment to the agreed or declared value."

In *Kansas City S. Ry. Co. v. Carl*<sup>9</sup> (decided March 10, 1913), the United States Supreme Court held as follows: "A case of valuation to adjust the rate, and not one of exemption from liability by negligence, which would be forbidden by the provision of the Carmack amendment of June 29, 1906, \* \* \* that no contract, receipt, rule, or regulation shall exempt an interstate carrier from the liability thereby imposed, is presented where the shipper, upon receipt of the bill of lading, signed and delivered to the initial carrier of an interstate shipment of household goods, an agreement purporting to 'release' the carrier from 'all liability from any loss or damage said property may sustain in excess of \$5 per hundred pounds,' such agreement bearing a footnote directing the carrier's agent to require the owner's signature if household goods are shipped 'at a rate based on valuation of \$5 per hundred pounds,' and to note the fact on the bill of lading, which was done, the carrier's tariff sheets on file with the Interstate Commerce Commission showing two rates on household goods, one when released to \$5 per hundred pounds, and a higher rate when not so released, and the rate indorsed on the bill of lading and paid by the shipper being such lower rate."

In *the Matter of Released Rates*<sup>10</sup> (decided May 14, 1908), the conclusions of the Interstate Commerce Commission were as follows:

I. If a rate is conditioned upon the shipper's assuming the risk of loss due to causes beyond the carrier's control, the condition is valid.

II. If a rate is conditioned upon the shipper's assuming the entire risk of loss, the condition is void as against loss due to the carrier's negligence or other misconduct.

III. If a rate is conditioned upon the shipper's agreeing that the carrier's liability shall not exceed a certain specified value—

(a) The stipulation is valid when the loss occurs through causes beyond the carrier's control.

(b) The stipulation is valid, even when the loss is due to the carrier's negligence, if the shipper has himself declared the value, expressly or by implication, the carrier accepting the same in good faith as the real value, and the rate of freight being fixed in accordance therewith.

(c) The stipulation is void as against loss due to the carrier's negligence or other misconduct if the specified amount does not purport to be an agreed valuation, but has been fixed arbitrarily by the carrier without reference to the real value.

(d) The stipulation is void as against loss due to the carrier's negligence or other misconduct if the amount specified, while purporting to be an agreed valuation, is in fact purely fictitious and represents an attempt to limit the carrier's liability to an arbitrary amount.

IV. A carrier may lawfully establish a scale of charges applicable to a specific commodity and graduated reasonably according to value. These rates must be applied in good faith, regard being had to the actual value of the property offered for shipment.

V. A carrier must not make use of its released rate as a means of escaping liability for the consequence of its negligence, either wholly or in part.

In *Norcross Bros. Co. v. Louisville & N. Rd. Co.*<sup>11</sup> the Commission held that carriers desiring to establish different rates on a commodity, based on the values of different classes or kinds thereof, or dependent not upon value but upon release to a certain amount of the carriers' liability for loss and damage, should make clear the distinction. In the first case there should be provision in the tariffs for statement in the bill of lading of the true value of the commodity, misstatement as to which would be a misdescription of the article shipped; and in the latter for exercise of choice of rates, by means of a statement in the bill of lading, signed by the shipper, specifying a value stated in the tariffs at which it is desired to ship.

In *Protection of Potato Shipments in Winter*<sup>12</sup> the Commission stated: "Under the Carmack amendment to section 20 of the act to regulate commerce no contract, receipt, rule, or regulation may exempt a carrier from liability for any loss or damage caused by it or any carrier over whose lines the property may pass. This amendment, however, does not prohibit the carrier from entering into reasonable contracts with the shippers for a release from liability as an alternative to other tariff provisions under which the carriers will accept this responsibility themselves. In *M., K. & T. Ry. Co. v. Harriman*, 227 U. S. 657, at p. 672, it is said that:

"The liability imposed by the statute is the liability imposed by the common law upon a common carrier, and may be limited or qualified by special contract with the shipper, provided the limitation or qualification be just and reasonable, and does not exempt from loss or responsibility due to negligence."

In *Larkin Co. v. Erie & W. Transportation Co.*<sup>13</sup> the Commission stated: "The provisions of the bill of lading were at the time of complainant's shipment and are now included in the defendant's tariffs, but the acceptance of the bill of lading by the shipper is not obligatory. It is optional, as under the tariffs published by the defendants and many other carriers the shipper has the choice of the rate conditioned upon the acceptance of the provisions of the bill of lading. He may elect not to accept the terms and provisions of the bill of lading, in which event the property will be carried subject to the common-law liability, and the rate charged therefor will be 10 per cent higher than the rate charged for property shipped subject to the terms and conditions of the bill of lading. In this case the shipper elected to accept the bill of lading, which must be considered as an acceptance of its conditions. The rate predicated upon those conditions was applied.

"The provision of the bill of lading referred to fixes the amount for which any carrier shall be liable as the invoice value of the property



at the place and time of shipment plus freight charges if paid. To that extent it changes the common-law rule, which makes the carrier liable for the value of the property at the place of destination and for actual damages sustained. That the rigor of the common-law liability may be modified by the carrier through any fair, reasonable, and just agreement with the shipper is well established. *Cau v. T. & P. Ry. Co.*, 194 U. S. 427; *Adams Express Co. v. Croninger*, 226 U. S. 491; *Kansas C. S. Ry. Co. v. Carl*, 227 U. S. 639; *Coleman v. N. Y. N. H. & H. Rd. Co.*, 215 Mass. 45."

The effect of the first "Cummins Amendment" of March 4, 1915, was to abolish in interstate commerce the whole system of released rates based on agreed valuations as distinguished from actual value.<sup>14</sup>

The effect of the second "Cummins Amendment" of August 9, 1916, was to permit limitations of liability, or the amount of recovery and the establishment and maintenance, under authority of the Interstate Commerce Commission, of rates dependent upon value declared in writing by the shipper, or agreed upon in writing as the released value of the property, in respect of all property except "ordinary live stock," which, as explained in the amendment, is still subject to the rigorous inhibitions against limitations of the carrier's liability contained in the first "Cummins Amendment."<sup>15</sup>

The original "Cummins Amendment" laid upon the carriers liability in full for any loss, damage, or injury caused by them to the property transported, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any receipt, bill of lading, or in any contract, rule, regulation, or tariff; and any such limitation, without respect to the manner or form in which sought to be made, was declared to be unlawful and void. *It was further provided that in instances where goods were hidden from view by wrapping or other means, the carrier might require the shipper to state specifically in writing the value of the goods and should not be liable beyond the amount so specifically stated.* By the amendment of August 9, 1916, the proviso last referred to was amended so as to provide that the provisions respecting liability for full actual loss, damage, or injury and declaring any limitation thereof to be unlawful and void shall not apply to baggage or to property, except ordinary live stock, on which the carrier has been or shall thereafter be authorized or required by order of the Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of Section 10 of the act. The rates assailed were in effect on August 9, 1916. No authority has been granted by the Interstate Commerce Commission for their publication in terms of value. The plain and unmistakable purpose of the "Cummins Amendment" was to make unlawful and void, except as otherwise provided therein, all attempted limitations of liability for loss, damage, or injury to property transported.<sup>16</sup>

1. *Adams Express Co. v. Croninger* (1913), 226 U. S. 491, 33 Sup. St. Rep. 148, 57 L. Ed. 314.

2. *Union P. Rd. Co. v. Burke* (1921) — U. S. —, — Sup. Ct. Rep. —, 65 L. Ed. 318.

3. *Kansas City S. Ry. Co. v. Carl* (1913), 227 U. S. 639, 33 Sup. Ct. Rep. 391, 57 L. Ed. 683; *Pittsburgh, C. C. & St. L. Ry. Co. v. Mitchell* (Ind. 1910), 91 N. E. 735, 740; *Bernard v. Adams Express Co.* (1912), 205 Mass. 254, 258, 91 N. E. 325; *McElvain v. St. Louis & S. F. Rd. Co.* (1910), 151 Mo. App. 126, 131 S. W. 735, 736; *Florman v. Dodd & Childs Express Co.*, 79 N. J. L. 63, 66, 74 Atl. 446; *Travis v. Wells, Fargo & Co.* 79 N. J. L. 83, 86, 74 Atl. 444; *Greenwald v. Barrett*, 199 N. Y. 170, 175, 92 N. E. 218; *Schutte v. Weir*, 111 N. Y. Supp. 240; *Wright v. Adams Express Co.*, 230 Pa. 635, 645, 79 Atl. 760; *United Lead Co. v. Lehigh V. Rd. Co.* (N. Y. 1913), 141 N. Y. Supp. 310, 312; *Wabash Rd. Co. v. Priddy* (Ind. 1913), 101 N. E. 724, 729; *Missouri, K. & T. Ry. Co. v. Walston* (Okla. 1913), 133 Pac. 142; *St. Louis & S. F. Rd. Co. v. Rinkle* (Okla. 1913), 133 Pac. 199; *Apple Suit & Cloak Co. 1. Platt* (Colo. 1913), 132 Pac. 71, 72; *Visnake v. Southern Express Co.* (S. C. 1912), 75 S. E. 962, 963; *Adams Express Co. v. Chamberlin* (Ga. 1912), 75 S. E. 601; *Kansas City S. Ry. Co. v. Mixon-McClintock Co.* (Ark. 1913), 154 S. E. 205, 208; *Robinson v. Louisville & N. Rd. Co.* (Ky. 1914), 169 S. W. 431; *St. Louis & S. F. Rd. Co. v. Mounts* (Okla. 1914), 144 Pac. 1036; *Rather & Co. v. Nashville C. & St. L. Ry. Co.* (Tenn. 1915), 174 S. W. 1113, 1115; *Toledo, St. L. & W. Rd. Co. v. Milner* (Ind. 1915), 110 N. E. 756; *Aradalous v. New York, N. H. & H. R. Rd. Co.* (Mass. 1916), 114 N. E. 297.
4. *Missouri P. Ry. Co. v. Harper Bros.* (1912), 201 Fed. Rep. 671.
5. *In Re The Cummins Amendment* (1915), 33 I. C. C. Rep. 682, 694.
6. *Adams Express Co. v. Croninger*, *supra*.
7. *Chicago, B. & Q. Rd. Co. v. Miller* (1913), 226 U. S. 513, 33 Sup. Ct. Rep. 155, 57 L. Ed. 323; *Chicago, St. P. M. & O. Ry. Co. v. Latta* (1913), 226 U. S. 519, 33 Sup. Ct. Rep. 155, 57 L. Ed. 328.
8. *Wells, Fargo & Co. v. Neiman-Marcus Co.* (1913), 227 U. S. 469, 33 Sup. Ct. Rep. 267, 57 L. Ed. 600.
9. *Kansas City S. Ry. Co. v. Carl* (1913), 227 U. S. 639, 33 Sup. Ct. Rep. 391, 57 L. Ed. 683.
10. *In the Matter of Released Rates* (1908), 13 I. C. C. Rep. 550. Because of its valuable analysis, we reproduce the following report of the Commission in this proceeding by Mr. Commissioner Lane:

"Since the passage of the Hepburn Act the Commission has been in receipt of numerous requests for an administrative interpretation of that part of section 20 which deals with the liability of carriers. Before undertaking to set forth its position in concrete form, the Commission deemed it advisable to hold an *ex parte* hearing in order to give carriers and shippers alike an opportunity to express their views. Pursuant to that purpose a hearing was held in Washington attended by the representatives of both interests. Inasmuch as the Commission does not take jurisdiction over claims for damages to goods in transit, it must be recognized that this problem is essentially one for the courts. But the validity of so-called 'Released Rates' is dependent upon its solution, and, if a definite statement of our position can meet with general acceptance, it will tend to eliminate much troublesome controversy and make for uniformity in railroad practice. We, therefore, take occasion at this time to give expression to our views, in the hope that they may be of advantage both to the railroads and the shipping public.

"In undertaking a solution of this problem we must consider separately losses *caused by the carrier* and losses *due to causes beyond the carrier's control*. It will also be necessary to distinguish between stipulations for total exemption from liability and stipulations limiting the amount of liability. Bearing these distinctions in mind, we must determine the validity of 'Released Rates' of the following character.

"I. Rates conditioned upon the shipper's assuming the risk of loss due to causes beyond the carrier's control.

"II. Rates conditioned upon the shipper's assuming the entire risk of loss.

"III. Rates conditioned upon the shipper's agreeing that the carrier's liability shall be limited to a certain specified value.

"Section 20 of the act provides:

"That any common carrier, railroad, or transportation company, receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed;

"*Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

"That the common carrier, railroad, or transportation company issuing such receipt, or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment or transcript thereof."

"I. If a rate is conditioned upon the shipper's assuming the risk of loss due to causes beyond the carrier's control, the condition is valid.



"In the absence of express stipulations the liability of a common carrier is not limited to loss occasioned by its negligence or other misconduct. The law has cast upon it an extraordinary responsibility; it is to a large extent an insurer of the goods entrusted to it for carriage. The rule, roughly stated, is that a common carrier is liable for all losses not occasioned by the act of God or the public enemy. But the carrier's right to relieve itself to some extent from this complete responsibility, by special agreement or notice, has long been recognized. It may strip itself of its insurer's liability and remain responsible only for its negligence and other misconduct. *York Manufacturing Co. v. I. C. R. R. Co.*, 3 Wall. 107, 18 L. ed. 170; *N. Y. C. R. R. Co. v. Lockwood*, 17 Wall. 357, 21 L. ed. 627.

"The law on this point is well settled, and a careful study of the provisions of the Hepburn Act will show that the carrier's right in this respect has not been abrogated. The law reads that the carrier shall be liable 'for any loss, damage, or injury to such property caused by it \* \* \* and no contract, receipt, rule or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed.' The scope of this prohibition must turn largely upon the construction to be placed upon the word 'caused.' The word 'caused' is not susceptible of a narrow interpretation—it is broad enough to comprehend all losses due to the carrier's misconduct, whether positive or negative in character. But it can not possibly be extended to cover losses due to causes beyond the carrier's control. We are necessarily driven to the conclusion, therefore, that the law places no restriction upon the carrier's effort to exempt itself from liability for losses which occur without fault on its part. We are of opinion, in short, that in the absence of agreement or notice the carrier's liability is governed by the ordinary common-law rule; but that a stipulation for exemption from liability for losses due to causes beyond the carrier's control is open to no legal objection.

"II. *If a rate is conditioned upon the shipper's assuming the entire risk of loss, the condition is void as against loss due to the carrier's negligence or other misconduct.*

"The Federal courts have held consistently that it is against public policy for a carrier to exempt itself from responsibility for its misconduct or the misconduct of its agents. They have refused accordingly to give vitality to a stipulation by which a carrier seeks to exempt itself from all liability or from liability for losses caused by negligence. *New Jersey Steam Navigation Co. v. Merchants Bank*, 6 How. 344, 12 L. ed. 465; *Express Co. v. Kountze Bros.*, 8 Wall. 342, 19 L. ed. 457; *The Kensington*, 183 U. S. 263, 268, 46 L. ed. 190, 193, 22 Sup. Ct. Rep. 102. This principle is squarely reaffirmed by section 20 of the act. The statute expressly denies to a carrier the right to exempt itself from liability for losses caused by it. A stipulation that a shipment is carried at 'owner's risk' will therefore be upheld as to losses due to causes beyond the carrier's control; but the provision is entirely void as against loss due to the carriers negligence or other misconduct.

"III. *Rates conditioned upon the shipper's agreeing that the carrier's liability shall be limited to a certain specified value.*

"The question here considered is one of great nicety. It can not be dismissed with a general statement. Careful study will show that there are three or four distinct phases, each one of which must be dealt with individually.

"(a) Where loss is due to causes beyond the carrier's control, the stipulation limiting liability to a designated value is valid.

"This follows necessarily from the conclusion we have already reached, viz., that the carrier has an undoubted right to exempt itself from responsibility for losses which it does not cause. *A fortiori* there is no legal obstacle in the way of a reasonable stipulation limiting the amount which the shipper can recover under the same circumstances.

"(b) When the shipper has placed upon his goods a specific value, the carrier accepting the same in good faith as their real value, the rate of freight being fixed in accordance therewith, the shipper can not recover an amount in excess of the value he had disclosed, even when loss is caused by the carrier's negligence.

"The limited liability of the carrier in this situation, even as against loss due to negligence, has been generally recognized. The leading case on this point is *Hart v. Pennsylvania R. R. Co.*, 112 U. S. 331, 28 L. ed. 717, 5 Sup. Ct. Rep. 151, the Supreme Court stating the rule as follows:

"When a contract of carriage, signed by the shipper, is fairly made with a railroad company, agreeing on a valuation of the property carried, with a rate of freight based on condition that the carrier assumes liability only to the extent of the agreed valuation, even in case of loss by the negligence of the carrier the contract will be upheld as a proper and lawful mode of securing a true proportion between the amount for which the carrier may be responsible and the freight it receives and of protecting itself against extravagant and fanciful valuations."

"We quote further:

"If the shipper is guilty of fraud or imposition, by misrepresenting the nature or value of the articles, he destroys his claim to indemnity, because he has attempted to deprive the carrier of the right to be compensated in proportion to the value of the articles and the consequent risk assumed, and what he has done has tended to lessen the vigilance the carrier would otherwise have bestowed. \* \* \* The compensation for carriage is based on that value. *The shipper is estopped from saying that the value is greater.* The articles have no greater value, for the purposes of the contract of transportation, between the parties to that contract."

"The same principle is applicable when the shipper has in some other way concealed the nature of the value of his goods in order to secure a lower rate of freight.

If the circumstances call for a disclosure of value and the shipper fails to make such disclosure, he will be concluded by the valuation stated in the bill of lading. The concealment may be just as effective and the fraud just as real as if there had been an affirmative misrepresentation. *Hart v. Pennsylvania R. R.*, *supra*; *Magnin v. Dinsmore*, 56 N. Y. 168, 62 N. Y. 35, 20 Am. Rep. 442; *Earnest v. Express Company*, 1 Woods, 573, Fed. Cas. No. 4,248; *Oppenheimer v. U. S. Express Co.*, 69 Ill. 62, 18 Am. Rep. 596.

"It does not appear that this principle is in any respect in derogation of the provisions of section 20. The carrier is made liable 'for any loss, damage, or injury,' and 'no contract, receipt, rule or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed.' But it is of the highest importance to note that this limitation is not secured by contract or notice—the contract has no validity *per se*. It is only right that a carrier who has acted in good faith should be protected against the frauds and misrepresentations of the shipper, and the law accomplishes this through the operation of the principle of estoppel. The shipper is estopped from recovering an amount in excess of the declared value, and the rule is in perfect harmony with the law as it stands today. 6 Cyclopaedia of Law and Procedure, title 'Carriers,' page 401, note 5.

"(c) If the specified amount does not purport to be an agreed valuation, but represents an attempt on the part of the carrier to limit the amount of recovery, to a fixed sum, irrespective of the actual value, the stipulation is void as against loss due to the carrier's negligence or other misconduct.

"Much confusion has arisen from failure to distinguish between this situation and the situation comprehended in *Hart v. Pennsylvania Railroad Co.*, *supra*. That decision was expressly predicated upon the principle of estoppel; the shipper has misrepresented the value of his property, and had thereby secured the benefit of a lower rate than he was properly entitled to by virtue of the real value. He was estopped by his fraudulent conduct from recovering an amount in excess of the value he had declared. In the case we are now considering the requisites of estoppel are wanting. An estoppel can not arise unless the party invoking it has been the victim of misrepresentation and has himself acted in good faith. Can it possibly be argued that when a carrier has arbitrarily placed in its bill of lading a stipulation limiting the amount of its liability, regardless of the actual value of the property, it may claim the benefit of an estoppel? Obviously not; it has not acted in good faith, neither has it been the victim of misrepresentation.

"The cases which take cognizance of this fundamental difference in principle are numerous and well considered. In *Eells v. St. Louis K. & N. W. Ry. Co.*, 52 Fed. 903, 907, the case was carefully differentiated from *Hart v. Pennsylvania R. R. Co.* The court said:

"In the case at bar, the contract provision neither states nor attempts an agreed valuation of the animal shipped. Whether the animal is of \$100, \$1,000 or \$10,000, or other value, the contract is silent. But the contract expressly provides for a limitation of liability to \$100, without reference to the valuation of the animal shipped \* \* \*. Such a contract can not be said to be, in the eye of the law, just and reasonable, in its attempt to limit the responsibility for the negligence of the carrier. When tested by the extracts above given from the *Hart case*, the failure of the contract in the case at bar to meet that test becomes strikingly manifest."

"In *Railway Co. v. Wynn*, 88 Tenn. 320, 14 S. W. 311, the validity of the doctrine that prevailed in the *Hart case* was again recognized and again distinguished:

"The carrier can not by contract excuse itself from liability for the whole nor any part of a loss brought about by its negligence. To our minds it is perfectly clear that the two kinds of stipulations—that providing for total and that providing for partial exemption from liability for the consequence of the carrier's negligence—stand upon the same ground and must be tested by the same principles. If one can be enforced, the other can; if either be invalid, both must be held to be so, the same considerations of public policy operating in each case."

"With great deference for those who may differ with us, we think it entirely illogical and unreasonable to say that the carrier may not absolve itself from liability for the whole value of property lost or destroyed through its negligence, but that it may absolve itself from responsibility for one-half, three-fourths, seven-eighths, nine-tenths, or ninety-nine one-hundredths of the loss so occasioned. With great unanimity the authorities say it can not do the former. If allowed to do the latter it may thereby substantially evade and nullify the law which says it shall not do the former, and in that do indirectly what it is forbidden to do directly. We hold that it can do neither. The requirement of the law has ever been, and is now, that the common carrier shall be diligent and careful in the transportation of its freight, and public policy forbids that it shall throw off that obligation, whether by stipulation for exemption in or in part from the consequences of its negligent acts. This view is sustained by sound reason, and also by the weight of authority.

"Referring to *Hart v. Pennsylvania R. R. Co.* and the cases which follow it, the court says:

"They were decided upon an entirely dissimilar state of facts, and from a wholly different point of view; that is to say, it appeared to the court, in each and every one of those cases, that there was an agreed valuation stated in the contract as the basis of the carrier's charges and responsibility; and the courts very properly held that in such cases the shipper was estopped to claim a greater sum than the agreed valuation.



"Though evident from the reasoning in the body of opinion in the *Hart* case, which may now be called the leading case in America, the court is careful to say, in conclusion, and the decision is based alone upon the ground above stated. 112 U. S. 343, 28 L. ed. 721, 5 Sup. Ct. Rep. 151."

"In *Alabama Great Southern Railway Company v. Little*, 71 Ala. 611, it was said:

"In the limitation of liability the carrier can not in any event, stipulate for more than an exemption extending from the extraordinary liability the common law imposes; the liability extending beyond that of ordinary paid agents, servants or bailees, denominated the liability of an insurer. Public policy, and every consideration of right and justice, forbid that he should be allowed to stipulate for exemption from liability for losses or injuries occurring through the want of his own skill or diligence, or that of the servants or agents he may employ, or through his own or their wilful default or tort. \* \* \* The carrier can not stipulate for an absolute, unqualified exemption from all liability, nor can he stipulate that he will answer, in any and all events, only for a sum less than the value of the goods, because in consideration of reduced rates of freight the shipper may assent to it."

"For further authority to the same effect see *Scruggs v. Baltimore, etc., R. R. Co.*, 5 McCrary, 590, 18 Fed. 318; *Ormsby v. U. P. R. R. Co.*, 2 McCrary, 48, 4 Fed. 706; *Judson v. Western R. R. Corporation*, 6 Allen, 488, 83 Am. Dec. 646; *Adams Express Co. v. Stettiners*, 61 Ill. 184, 14 Am. Rep. 57; *Ga. Pacific R. Co. v. Hughart*, 90 Ala. 36, 8 So. 62; *Georgia R. & Bkg. Co. v. Keener*, 93 Ga. 808, 44 Am. St. Rep. 197, 21 S. E. 287; *Ullman v. C. & N. W. R. Co.*, 112 Wis 150, 56 L. R. A. 246, 88 Am. St. Rep. 949, 88 N. W. 41; *Railway Co. v. Sowell*, 90 Tenn. 17, 15 S. W. 837; *Rosenfeld v. Peoria, Decatur & Evansville R. Co.*, 103 Ind. 121, 53 Am. Rep. 500, 2 N. E. 344; *Western Railway Co. v. Harwell*, 91 Ala. 340, 8 So. 649; 4 Elliott, Railroads, 2336; note 14 L. R. A. pp. 434, 435; 6 Cyc. Law & Proc. title 'Carriers,' p. 400, b.; Hutchinson, Carriers, 3d ed., Sections 425-427.

"(d) If the specified amount, while purporting to be an agreed valuation is in fact purely fictitious and represents an attempt to limit the carrier's liability to an arbitrary amount, liability for the full value can not be escaped in event of loss due to negligence.

"This situation is substantially identical with that just considered—the difference is one in form only. If the shipper and carrier collusively agree that, for the purpose of the transportation, the property shall be deemed to have a specified value which both know to be grossly disproportionate to the true value, the agreement can not be called bona fide. It may be styled an 'agreed valuation,' but it is obviously an attempt to accomplish what the law forbids. The requirement that the carrier shall not limit in any degree its responsibility for negligence is uncompromising, and it will not yield merely because the parties choose to employ the phrase 'agreed valuation.' The law will not countenance so obvious a subterfuge.

"We are aware that the distinctions which are here drawn have not been invariably recognized, but it is believed that this has been due to a misconception of the real scope of the decision in *Hart v. Pennsylvania R. R.* Careful study of the opinion of the court and of the cases which are cited in support of the decision must lead inevitably to the conclusion that the principle does not extend beyond the case where the 'agreed valuation' is bona fide. It can not apply where the valuation is purely fictitious. To hold otherwise would mean a departure from principles which the Supreme Court has maintained with unvarying consistency. In the *Hart* case the Supreme Court says:

"If the shipper is guilty of fraud or imposition, by misrepresentation the nature or value of the articles, he destroys his claim to indemnity \* \* \*. He is estopped from saying that the value is greater."

"But if the carrier and shipper both know that the value agreed upon is out of all proportion to the true value, it can not be said that the shipper has been guilty of fraud or misrepresentation—he is not estopped from proving the real value of his goods.

"It is significant that the cases upon which the Supreme Court placed reliance in the *Hart* case contain nothing inconsistent with this view, while in several the distinction has been expressly pointed out. In *Harvey v. Terre Haute & Indianapolis R. R. Co.*, 74 Mo. 538, the court said:

"Where the reduced value is voluntarily fixed by the shipper with a view of obtaining a low rate of freight, without any knowledge on the part of the carrier that the property was of greater value, it would be a fraud upon the carrier to permit the shipper to recover a greater sum than that fixed by him."

"In *South & North Alabama R. R. v. Henlein*, 52 Ala. 606, 23 Am. Rep. 578, the court said:

"If the measure of the liability thus fixed appears to be greatly disproportionate to the real value of the animal, and the amount of freight received, we should not hesitate to declare it unjust and unreasonable."

"In *Graves v. Lake Shore & Michigan Southern R. R.*, 137 Mass. 33, 50 Am. Rep. 282, it was expressly found that 'the defendant had no knowledge of the value of the goods except that furnished by the statement of the shippers.' The court therefore held that the shippers were 'estopped to show that it was of greater value than that represented.'

"In the following cases also it appeared that the shipper perpetrated a fraud upon the carrier, either by a positive misrepresentation or by a concealment of value; the carrier was ignorant of the actual worth of the shipment, and the shipper

was estopped from recovering damages in excess of the value disclosed. *Magnin v. Dinsmore*, 56 N. Y. 168, 62 N. Y. 35, 20 Am. Rep. 442, 70 N. Y. 410, 26 m. Rep. 608; *Oppenheimer v. U. S. Express Co.*, 69 Ill. 62, 18 Am. Rep. 596; *Newburger v. Howard & Co.'s Express*, 6 Phila. 174; *Muser v. Holland*, 17 Blatchf. 412; *Earnest v. Express Co.*, 1 Woods, 573.

"These cases are entitled to special weight, because the Supreme Court has said that they support 'the rule which we regard as the proper one.'

"It is pertinent to quote from certain other cases in which the distinctions here drawn have been clearly appreciated. In *Georgia R. & Bkg. Co. v. Keener*, 93 Ga. 308, 44 Am. St. Rep. 197, 21 S. E. 287, the court said:

"Where a shipper enters into an express contract with a common carrier, by which he agrees in consideration of a reduced rate of freight that the carrier shall not be liable for more than a stated sum in case the goods shipped are lost while in the carrier's possession, the contract will be upheld as to loss not involving negligence on the part of the carrier; but carriers can not, by any special contract, exempt themselves from liability for loss occasioned by their negligence; and this is so as well where the contract provides for partial or limited exemption as where it contemplates total exemption from liability. The shipper it is true, may, by his representations or agreement as to the value of the goods, estop himself from recovering their full value, notwithstanding they are lost through the carrier's negligence. This would be the case if, upon being required at the time of shipment to state the value of the goods, the shipper misled the carrier by stating a sum less than their value (Code, sec. 2080), or if the shipper and the carrier agreed upon a certain sum as the actual value of the goods and the charge for freight was based upon that valuation. See, on this subject, *Hutchinson on Carriers*, 2d ed., section 250, and cases cited; *Hart v. Railroad Co.*, 112 U. S. 331, 28 L. ed. 717, 5 Sup. Ct. Rep. 151; *Chicago, etc., Ry. Co. v. Chapman* (Ill.) 23 Am. Stat. Rep. 587, and notes; 54 N. W. 1072; also collection of cases in 29 Am. Law Register (1890). 771. But the principle which relieves the carrier from liability for more than the agreed value does not apply where the valuation is merely arbitrary and fixed without reference to the real value of the goods; and this is understood by the carrier as well as the shipper. In the present case there was no inquiry on the part of the carrier as to the value of the goods, and it is clear that a valuation of \$5 per 100 pounds for wearing apparel and household goods indiscriminately could not have been understood to represent their actual value. The contract in question was simply an attempt to limit the liability of the carrier, without regard to the actual value of the property; and it follows from what we have said that it was inoperative for that purpose, if the loss was occasioned by negligence on the part of the defendant.'

"In the case of *Alair v. Northern Pacific Railway Co.*, 19 L. R. A. 764, Judge Mitchell said, following the decision in the *Hart* case:

"Assuming, as we must, that the contract was fairly made for the purpose expressed in it, we think it ought to be upheld as just and reasonable. It is not in any proper sense a contract for exemption from the consequences of negligence. In this view we are sustained by the great weight of authority. \* \* \*

"Most of the cases, usually carelessly cited as authority on the other side of this question, will be found, on careful examination, to be clearly distinguishable and not in point. In some of them the stipulation was purely and solely one arbitrarily limiting the amount of recovery, without regard to the value of the property, as in *Moulton v. St. Paul, M. & M. R. Co.*, 31 Minn. 85, 47 Am. Rep. 781, 16 N. W. 497. In others it was held that the shipper never agreed to the limitation, and for that reason was not bound by it. In others the decision was expressly placed on the ground that both parties knew that the property was of much greater value than that stated in the contract, and arbitrarily inserted a sum grossly disproportionate to the true value, solely for the purpose of limiting the amount of the carrier's liability.'

"In further support of this position we quote from Judge McClain's learned article on 'Carriers' in the *Cyclopedia of Law and Procedure*:

"When the pretended agreed valuation is not such in fact, but is simply a cloak for limitation of liability to a fixed sum, which is less than the real value, the contract will not be valid as against a loss due to negligence. 6 Cyc., title 'Carriers,' p. 401.'

"In the third edition of *Hutchinson on 'Carriers'*, volume 1, section 427, the governing principle is stated with the same careful qualification:

"But while the owner of the goods and the carrier may fix a value on the goods beyond which the carrier in the event of loss will not be liable, the agreement fixing value, in order to be conclusive on the owner, must be bona fide and the value reasonable. If, for instance, the value agreed upon should be so far below the real value of the goods that from their appearance the carrier must have known of the discrepancy, the agreement fixing value would not be bona fide, and, depending on no value at all, would amount to an arbitrary limitation upon the carrier's legal liability which, in the event of loss occasioned by negligence, would not deprive the owner of the right to recover the real value of the goods. While it is true that the owner of goods of great value which are concealed in packages or otherwise hidden from view, and upon which is a very inconsiderable value has been placed by him, will be precluded, in case of loss, from the right to recover a greater sum than the value which he has placed upon them, the reason for this exception is, that to charge the carrier with their real value, when by the owner's misrepresentation he has been induced to undertake the employment at a reduced



compensation and to lessen the degree of care and vigilance which he otherwise would have exercised, would be to sanction fraud and to enable the owner to gain an unfair advantage over the carrier through his own misrepresentation. The knowledge which the carrier has of the real value of the goods tendered to him for shipment would therefore seem to be material in determining the effect of the valuation agreement upon his liability, although a contrary conclusion has been reached by some courts. And it may be stated as the better rule that where the value agreed upon is so out of harmony with the ordinary value of similar kinds of goods as to indicate that the question of value did not, in fact, enter into the agreement, and the carrier, under the circumstances, must have known of the discrepancy, the agreement placing a value on the goods will be considered as a mere attempt by the carrier to secure a partial exemption from liability, and of no effect in relieving him from the obligation of responding for their real value where his misconduct has occasioned their loss. So in the absence of fraud or concealment on the part of the owner of the goods whereby the carrier has been misled, the valuation agreed upon, it is said, must be reasonable, regard being had to the real value of the goods; and if such value be unreasonable, the owner will not be estopped from claiming damages on the basis of their real value.'

"The great bulk of authority is clearly in accord and at the same time in perfect harmony with *Hart v. Pennsylvania R. R. Co.* See *Scruggs v. Baltimore, etc., Ry. Co.*, 5 McCrary, 590, 18 Fed. 318; *Ormsby v. U. P. R. R. Co.*, 2 McCrary, 48, 4 Fed. 706; *Judson v. Western R. R. Corporation*, 6 Allen, 488, 83 Am. Dec. 646; *Adams Express Co. v. Stettaners*, 61 Ill. 184, 14 Am. Rep. 57; *Ga. Pacific Railway Co. v. Hughart*, 90 Ala. 36, 8 So. 62; *Ullman v. C. & N. W. Ry. Co.*, 112 Wis. 150, 56 L. R. A. 246, 88 Am. St. Rep. 949, 88 N. W. 41; *Railway Co. v. Sowell*, 90 Tenn. 17, 15 S. W. 837; *Rosenfeld v. Peoria, Decatur & Evansville Ry. Co.*, 103 Ind. 121, 53 Am. Rep. 500, 2 N. E. 344; *Western Railway Co. v. Harwell*, 91 Ala. 340, 8 So. 649; 4 Elliott Railroads, 2336, 14 L. R. A. pp. 434, 435, note; Hutchinson 'Carriers,' vol. 1, section 427, and cases cited:

"In the case of *B. & O. S. W. Ry. Co. v. Voigt*, 176 U. S. 507, 44 L. ed. 565, Sup. Ct. Rep. 385, we find this concise summary of the law:

"Upon these principles we think the law of today may be fairly stated as follows: 1. That exemption claimed by carriers must be reasonable and just, otherwise they will be regarded as extorted from the customers by duress of circumstances, and therefore not binding. 2. That all attempts of carriers, by general notice or special contract, to escape from liability for losses to shippers, or injuries to passengers, resulting from want of care or faithfulness, cannot be regarded as reasonable and just, but as contrary to a sound public policy, and therefore invalid.'

"From these words it would seem to be clear that the law will not permit a carrier to stipulate against the consequences of its negligence, either wholly or in part. A stipulation can not attain validity merely because it appears in the guise of a fictitious agreed valuation.

"But if there were room for any difference of opinion on this point prior to the enactment of the Hepburn Act, the passage of that measure has removed all uncertainty. The act expressly invalidates all stipulations designed to limit for losses caused by the carrier. Irrespective of a contract or notice limiting the amount of recovery, the carrier can not escape liability for full value in event of loss due to its own negligence or other misconduct, *except* in the single instance where the shipper has misled the carrier by his misrepresentation or concealment of value and estopped himself from recovering more than the value he has disclosed.

"We entertain no doubt as to the legal strength of these conclusions, and it is a source of satisfaction to us that they are in accord with public policy and the dictates of justice. Public policy forbids that a carrier should escape the consequences of its negligence. If public policy is opposed to stipulations designed to secure *entire exemption* from such responsibility, the same public policy is opposed to stipulations providing for *partial exemption*. But it is obvious that a carrier may lawfully establish a scale of charges applicable to a specific commodity, and graduated reasonably according to value. The cost of carriage is not the only element in the carrier's charges—a carrier is subject to a certain insurance liability. It would seem proper, therefore, that when its insurance risk is enlarged by reason of increased value of the goods intrusted to it, it may provide for a reasonable increase in its charges. We hold that it is in contravention neither of the letter nor the spirit of the law for the carrier to provide a higher rating for goods of special value than it applies to goods of the same class but of lower value. If it enforces its tariffs in good faith, endeavoring to give to each shipment the rating which its value requires, the law affords complete protection against the frauds and misrepresentations of the shipper. But if the specified valuation is fixed by the carrier without reference to the real value, whether with or without collusion on the part of the shipper, liability for the full value can not be escaped in event of loss due to negligence.

"The question of liability for loss occurring on connecting lines is outside the scope of our present inquiry. Consideration of that problem is unnecessary in order to determine the validity of 'released rates,' and we therefore refrain from taking it up at this time. It is, however, proper to call attention to the fact that in the recent case of *Smeltzer v. St. Louis & San Francisco Railroad Company*, 158 Fed. 649, the circuit court of the United States for the western district of Arkansas upheld this clause of the law in its entirety, and refused to give effect to a stipulation of the carrier that it should not be held liable for the negligence of its connections."

11. *Norcross Bros. Co. v. Louisville & N. Rd. Co.* (1914), 29 I. C. C. Rep. 109; cited, *Louisiana Sugar Planters' Association v. Illinois C. Rd. Co.* (1914), 31 I. C. C. Rep. 311, 320.
12. *Protection of Potato Shipments in Winter* (1914), 29 I. C. C. Rep. 504, 507.
13. *Larkin Co. v. Erie & W. Transportation Co.* (1915), 34 I. C. C. Rep. 106, 109.
14. *Iowa State Board of Railroad Commissioners v. Atchison, T. & S. F. Ry. Co.* (1915), 36 I. C. C. Rep. 79.
15. *In the Matter of Bills of Lading* (1919), 52 I. C. C. Rep. 671, 684, et seq.
16. *Williams Co. v. Hartford & N. Y. Transportation Co.* (1918), 48 I. C. C. Rep. 269, 272, et seq.

2013-C. POWER OF INTERSTATE COMMERCE COMMISSION TO AUTHORIZE OR REQUIRE RATES DEPENDENT UPON A DECLARED OR RELEASED VALUATION.

See "*Power of Interstate Commerce Commission to authorize or require rates dependent upon a declared or released valuation*," *Section 2020-C, post*.

2013-D. APPLICATIONS TO INTERSTATE COMMERCE COMMISSION FOR THE ESTABLISHMENT OF RELEASED AND DECLARED VALUATION RATES.

Upon the petition of a shipper to require a carrier to establish rates depending upon the declared or agreed value of the property transported, a hearing will be had and an order thereon will issue. Upon a petition by a carrier for authority to establish such a rate, the Commission will investigate its reasonableness and propriety in such manner and by such means as it may deem proper; any rate so authorized must be published and posted as required by law and be subject to suspension on protest and to attack on complaint as in the case of other rates.<sup>1</sup>

Under the so-called "Cummins Amendment" as further amended, carriers when authorized or required by the Commission may establish rates on property, other than ordinary live stock, based upon its agreed or declared value even though the value so declared or agreed to may be less than the true value of the property transported.<sup>2</sup>

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1. Conf. Rul. Bul., Rule 504 (March 12, 1917); *Toledo St. L. & W. Rd. Co. v. Milner* (Ind. 1915), 110 N. E. 756.

2. Conf. Rul. Bul., Rule 500 (Nov. 8, 1916).

2013-E. TARIFF SCHEDULES CONTAINING DECLARED OR RELEASED-VALUATION RATES MUST REFER TO THE ORDER OF THE INTERSTATE COMMERCE COMMISSION AUTHORIZING THE SAME.

Section 20 of the Interstate Commerce Act provides that any tariff schedules which may be filed with the Interstate Commerce Commission pursuant to an order authorizing or requiring the establishment and maintenance of rates dependent upon declared value, shall contain specific reference thereto, and may establish rates varying with the value so declared or agreed upon; and the Commission is empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation.



2013-F. SHIPPER CHARGED WITH KNOWLEDGE OF THE EXISTENCE OF TWO RATES, ONE BASED UPON RELEASED VALUATION.

Where there are two interstate rates, based upon valuation, then the valuation which the shipper declares is the one applicable, and if such rate be filed, as required by law, the shipper is bound to take notice of it, whether called to his attention or not.<sup>1</sup>

A special contract for an interstate railway shipment without limitation of the carrier's liability to an agreed value can have no binding force where the carrier's published tariffs on file with the Interstate Commerce Commission graduate the rates according to declared value and limit the carrier's liability accordingly, since the shipper as well as the carrier is bound to take notice of the filed tariff rates, and so long as they remain operative they are conclusive as to the rights of the parties in the absence of facts or circumstances showing an attempt at rebating or false billing.<sup>2</sup>

Two carriers filed and published tariffs under the Act making two rates on household goods, one of which was based on a declared valuation and limitation of liability in case of loss, and the other showed a higher rate where no valuation was declared or limitation described. A shipper of household goods testified that upon inquiry the agent of one of the carriers quoted a rate to him without explaining that two rates were in existence, and also that when the contract of shipment was signed and the freight paid, the agent endorsed on it the valuation of the property and limitation of liability in case of loss, and that he objected to the limitation, but did not offer to pay the higher rate, nor ask to have the goods withheld from transportation. *Held*, That the filing and publication of the rates afforded the shipper notice of the existence of the two rates, and he was presumed to have known of the limitation in value and of liability in the rate under which the shipment was made and the freight paid, and this rate determined the liability of the carrier in an action brought for the loss of the goods.<sup>3</sup>

1. *United Lead Co. v. Lehigh V. Rd. Co.* (N. Y. 1913), 141 N. Y. Supp. 310, 311.
2. *Atchison, T. & S. F. Ry. Co. v. Robinson* (1914), 233 U. S. 173, 34 Sup. Ct. Rep. 556, 58 L. Ed. 901.
3. *Christi v. Missouri P. Ry. Co.* (Kans. 1914), 141 Pac. 587. Conference Rulings Bulletin, Rule 160 (Apr. 6, 1909), reads as follows: "A carrier's tariff provided higher rates on shipments not tendered with a uniform bill of lading: *Held*, That the tender of a shipment accompanied by other than a uniform bill of lading may not be taken by the carrier as evidence of the shipper's election to use the higher rate. The carrier must direct his attention to the fact that a lower rate is available under the uniform bill of lading." This rule is contra and obviously does not state the law on the subject. In *Harmon & Co. v. Northern P. Ry. Co.* (1915), 33 I. C. C. Rep. 370, the Commission held as follows: "Whenever a shipment is tendered a carrier upon which its tariffs provide for the application of alternative rates dependent upon the value thereof, the duty rests upon the agent of the carrier to call the attention of the shipper to the different rates and secure his signature to a proper bill of lading." This holding is cited in *Henderson v. Morgan's L. & T. Rd. & S. S. Co.* (1916), 39 I. C. C. Rep. 483, 484. These decisions are contrary to the weight of judicial authority.

Conference Rulings Bulletin, Rule 226 (Nov. 9, 1909), reads as follows: "Rule 6 of the Southern Classification provides that where the tariff offers a reduced rate based on a certain fixed valuation a release, in the form specified in the tariff and containing the agreed valuation, must be written and signed by the shipper on the face of the bill of lading. As applied to a case where the shipper indorsed the released valuation on the bill of lading, but, not knowing the requirements of the rule, omitted to indorse the special form across its face, it was *Held*, That the rule is unreasonable and that it is the carriers' duty to secure the shipper's signature to such a release on a bill of lading when it has reasonable notice of his desire to take advantage of the lower rate upon a released valuation."

## 2013-G. EFFECT OF DECLARATION OR AGREEMENT AS TO VALUE.

Section 20 of the Interstate Commerce Act provides that a declaration or agreement as to value for the purpose of fixing rates shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of Section 10 of the Act to Regulate Commerce relating to penalties and forfeitures for violations thereof.

A case of an agreed valuation within the meaning of the rule that a carrier, when the rates are graduated by value, may limit its liability for the loss of an interstate shipment to the agreed or declared value, is presented where the shipper's agent filled out a printed bill of lading describing the shipment as "emigrant movables \* \* \* Released to \$10 per cwt." which, on presentation, was signed by the carrier's agent, and the goods were shipped under the lower rate applicable to goods of that character and value.<sup>1</sup>

A recovery at the ratio of \$100 per ton for the lost freight is the limit of the damages recoverable for the loss of a part of an interstate shipment of 25 tons of copper, under a bill of lading which contains a released-valuation clause of \$100 per net ton, based upon a difference in the carrier's freight rates on file with the Interstate Commerce Commission.<sup>2</sup>

In *American Express Co. v. United States Horse Shoe Co.*<sup>3</sup> the United States Supreme Court, per Mr. Justice White stated: "The subject-matter of this suit is the liability, if any, of the plaintiff in error, the Express Company, for the failure to safely deliver a colt which was intrusted to it by the agent of the defendant in error at Milwaukee, Wisconsin, for transportation to Erie, Pennsylvania, and, if there was any liability, the amount thereof. The controversy is here to review the action of the court below in affirming a judgment of the trial court, rendered on a verdict of a jury finding that there was liability, and fixing the amount at \$1,916.70. 250 Pa. 527, 95 Atl. 706. Jurisdiction to review rests upon the interstate commerce character of the shipment, involving various alleged misconstructions of the Act of Regulate Commerce and consequent deprivation of Federal rights asserted to have arisen from the course of the trial in the court of first instance, as also from the action of the court below in affirming. These contentions in the courts concerned both the existence of liability, and, if any, the amount. As the result, however, of the conclusion of both courts as to the fact of negligence, and the absence of any ground for clear conviction of error on the subject (*Great Northern R. Co. v. Knapp*, 240 U. S. 464, 466, 60 L. ed. 745, 751, 36 Sup. Ct. Rep. 399; *Baltimore & O. R. Co. v. Whitacre*, 242 U. S. 169, ante, 228, 37 Sup. Ct. Rep. 33), as well as because of the limitations resulting from the errors assigned and relied upon, the question of liability may be put out of view, thus reducing the case to a question of the amount, and that turns on whether there was a limitation of liability and the right to make it.

"The printed form of contract (express receipt) which was declared on and made a part of the complaint contained a caption under a title 'Notice to Shippers,' directing their attention to the fact that they must value their property to be shipped, and that the charges



for transportation and the sum of recovery in case of loss would be based upon valuation. The contract itself was entitled 'Limited Liability Live-stock Contract.' Its first clause described the carriage which was to be provided for with appropriate blanks to enable the insertion of the live stock which it covered and the rate to be paid for the service, with a proviso that the charge was based upon valuation fixed by the shipper. The second clause stated a demand by the shipper for rates to be charged for the carriage, and that he was offered 'by said Express Company alternative rates proportioned to the value of such animals, such value to be fixed and declared by the shipper, and according to the following tariff of charges, viz.:' This was followed by clause 3, which contained enumerations of various classes of animals, fixing a primary valuation for each class; for instance, 'For . . . horses . . . \$100,' 'For . . . colts . . . \$50,' The fourth and fifth clauses provided that after ascertaining the rate to be charged for all classes of animals embraced in clause 3 by applying to those classes the rate provided by the tariff sheets filed according to law with the Interstate Commerce Commission, there should be added to such rates a stated percentage of the amount by which the declared valuation of the shipper exceeded the primary valuation fixed by the terms of clause 3. The fifth clause also concluded with the declaration that the shipper, in order to avail himself of the alternative rates, had declared a value as follows, and contained blanks for the insertion of said valuation.

"There was filled in this blank contract, assigned by the parties and as sued on, in the first clause a statement of the animals shipped, a mare and colt, and of the rate \$75. In the third clause containing the enumeration of classes, in the class as to horses valued at \$100 there was written '\$100,' and in the class as to colts valued at \$50 there was written '\$50'. There was no filling of the blank at the end of the fifth clause, stating the owner's valuation, and that space, therefore, remained vacant.

"There was evidence tending to show that the shipper was experienced in shipping horses and was informed of the right to value, and that the rate as well as the recovery would depend upon valuation. Evidence was also admitted, over objection of the company, tending to show that the shipper was unaware of the valuation clauses and that he signed the contract without reading it. There was further evidence that, on the contrary, the shipper was fully informed by the agent and declared his purpose to fix the primary valuation and not to exceed it. In addition, evidence was tendered by the defendant which was rendered and objection reserved, tending to show that, in consequence of the desire of the shipper not to change the primary valuation, that is, to adopt the same, the figures written into the clauses of Sec. 3 of \$100 as to the mare and \$50 as to the colt were written by the agent inadvertently in the wrong place, intending to write them at the space left vacant for the shipper's valuation at the end of clause 5, and that for the same reason the rate charged was based on the tariff as applied to the primary valuation as stated in the third clause of the contract.

"Putting out of view the conflicting tendencies of the proof, and looking at the subject-matter from the point of view of the contract, that it was one intended to limit liability, or, in other words, to fix a rate according to value, at the shipper's election, and to regulate recov-

cry in case of loss correspondingly, would seem too clear for anything but statement. It is true the intimation is conveyed in the argument that the alternative rate depended exclusively upon the making of a valuation by the shipper, and that where this was not done, there was no valuation and no limitation, and a consequent limited rate and unlimited liability. But the suggestion disregards the stating of a value in the different clauses of Sec. 3 which are susceptible of no other explanation than that they were intended as a primary value to control as the basis for fixing the rates and as a rule of limitation if the shipper did not, by making another and increased value, become liable for a higher rate and possess the right to a greater recovery. To adopt the suggestion would require a disregarding of the plain terms of the contract, and would leave no basis upon which to explain the rate fixed, which clearly rested upon the tariff as applied to the articles and the statement as to value fixed in the third clause.

“That it was in the power of the carrier under the Act to Regulate Commerce, as amended, to limit liability even in case of negligence by affording the shipper an opportunity to pay a higher rate and secure a higher recovery than the one initially fixed by the carrier, is so conclusively settled as to be beyond controversy. *Adams Exp. Co. v. Croninger*, 226 U. S. 491, 57 L. ed. 314, 44, L. R. A. (N. S.) 257, 33, Sup. Ct. Rep. 148; *Kansas City Southern R. Co. v. Carl*, 227 U. S. 639, 57 L. ed. 683, 33, Sup. Ct. Rep. 391; *Missouri, K. & T. R. Co. v. Harriman*, 227 U. S. 657, 57 L. ed. 690, 33 Sup. Ct. Rep. 397; *Chicago, R. I. & P. R. Co. v. Cramer*, 232 U. S. 490, 58 L. ed. 697, 34 Sup. Ct. Rep. 383; *Great Northern R. Co. v. O'Connor*, 232, U. S. 508, 58 L. ed. 703, 34 Sup. Ct. Rep. 380, 8 N. C. C. A. 53; *Boston & Maine R. Co. v. Hooker*, 233 U. S. 97, 58, L. ed. 868, L. R. A. 1915B, 450, 34 Sup. Ct. Rep. 526, Ann. Cas. 1915D, 593; *Atchison, T. & S. F. R. Co. v. Robinson*, 233, U. S. 173, 58 L. ed. 901, 34 Sup. Ct. Rep. 556; *Louisville & N. R. Co. v. Maxwell*, 237 U. S. 94, 59, L. ed. 853, L. R. A. 1915E, 665, P. U. R. 1915C, 300, 35 Sup. Ct. Rep. 494; *George N. Pierce Co. v. Wells F. Co.*, 236 U. S. 278, 59 L. ed. 576, 35 Sup. Ct. Rep. 351; *Cincinnati, N. O. & T. P. R. Co. v. Rankin*, 241 U. S. 319, 60 L. ed. 1022, L. R. A. 1917A, 265, 36, Sup. Ct. Rep. 555; *New York C. & H. R. R. Co. v. Beaham*, 242 U. S. 148, ante 210, 37 Sup. Ct. Rep. 43.

“These rulings are decisive unless it be that, for some reason they are inapplicable, and we briefly consider separately the grounds relied upon as demonstrating that result.

“It is said the rate sheets filed with the Interstate Commerce Commission, if they sustained the contract, were not posted, and therefore the contract must be treated as having nothing to rest upon. But the proposition is adversely disposed of by several of the cases above cited. *Kansas City Southern R. Co. v. Carl*, 227 U. S. 639, 652, 57 L. ed. 683, 688, 33, Sup. Ct. Rep. 391; *Boston & M. R. Co. v. Hooker*, 233 U. S. 97, 111, 58, L. ed. 868, 875, L. R. A. 1915B, 450, 34, Sup. Ct. Rep. 526, Ann. Cas. 1915D, 593; *Cincinnati N. O. & T. P. R. Co. v. Rankin*, 241 U. S. 319, 327, 60 L. ed. 1022, L. R. A. 1917A, 265, 36 Sup. Ct. Rep. 555; *New York C. & H. R. R. Co. v. Beaham*, 242 U. S. 148, 151, ante, 210, 37 Sup. Ct. Rep. 43.

“But it is urged the contract of limitation was void because it is shown to have been illegal; that is, repugnant to the official tariff



sheets filed with the Interstate Commerce Commission, which, properly authenticated, were offered in evidence. But, turning to the official tariff sheets as found in the record, it is apparent that the terms of the contract are substantially identical with the statement in the tariff sheets as to the rates concerning the shipment of live stock, and indeed, comparing the two, it is impossible to reach any other conclusion than that the provisions of the contract were copied from the provisions of tariff sheets. In substance the argument rests upon the assumption which we have already disposed of; that is, that the contract only provided for a limitation in the event of a declaration of value by the shipper, and left no room for such a limitation where the shipper obtained the lowest possible rate by making no valuation, and accepting the primary limit of value stated in the contract by the carrier. The argument as we are now considering it, however, proceeds not solely upon the text of the contract and the tariff sheets concerning the carriage of live stock, but additionally upon the effect produced upon such provisions by clauses in the tariff sheets relating to the valuation of merchandise. The argument in this; that as in the rate schedules dealing with merchandise valuation it is expressly provided that the primary limitation of value fixed shall be the measure of the charge and liability unless another and higher valuation be declared, such rule ought not to be deducted from the provisions as to live stock valuation where that stipulation is not found in express terms, and hence that, in the absence of an express valuation in a live-stock contract by a shipper, no primary limitation on value is possible, and thus the rule of the lesser the rate the greater the responsibility would necessarily, in the case of the live-stock, come to pass. Incongruous as this result would be, it is said that it should be applied since, in the rate sheet concerning merchandise, it is declared in paragraph d that 'these charges must not be applied to live animals, live birds, or live stock (see paragraph g),' that is, the live-stock paragraph. But to give to the clause the import claimed for it would be to cause it to accomplish the very result which it was obviously intended to prevent; that is, the control or modification of the charges contained in live-stock clauses by the provisions as to merchandise charges. Indeed, the complete answer to the proposition is the one which we have previously pointed out in considering the argument in another form of statement,—that to accede to it would require a plain disregard of the fixing of a primary valuation by the terms of the contract and the sanction of the right to do so, found in the express words of the rate sheets.

“Finally, it is said that the right to limit ought not to be recognized in the presence of a controversy and conflicting tendencies of proof as to whether the limitation of liability was called to the attention of the shipper, and, if one aspect be accepted, of the possibility that the contract was signed by the shipper in ignorance of the clause. But here again, the contention but overlooks the very foundation upon which the principle settled by the adjudged cases rests and disregards the express ruling in some of them, that the effect of a contract made and signed by shipper, which is lawful from the point of view of the established rate sheets, may not be avoided by the suggestion that, by neglect or inattention, the contract which was entered into was never read. *Cincinnati, N. O. & T. P. R. Co. v. Rankin*, 241, U. S. 319, 60 L. ed. 1022, L. R. A., 1917A, 265, 36 Sup. Ct. Rep. 555; *New York C. & H.*

*R. R. Co. v. Beaham*, 242 U. S. 148, 151, ante, 210, 216, 37, Sup. Ct. Rep. 43.

"As from what we have said it follows that the shipper should not have been permitted, after obtaining the lowest possible rate based upon a valuation to which his right of recovery in case of loss was limited, to recover upon the happening of the loss, an amount wholly disproportionate and inconsistent with the rate paid, contrary to the express terms of the contract, it results that the judgment below must be and it is reversed and the case remanded for further proceedings not inconsistent with this opinion."

A limitation of liability in case of loss or damage to a valuation agreed upon for the purpose of determining which of two alternative rates shall apply to a particular shipment is not forbidden by the provision in the "Carmack Amendment" of June 29, 1906, that no contract, receipt, rule, or regulation shall exempt an interstate carrier from the "liability thereby imposed."<sup>4</sup>

A stipulation in a shipping contract limiting the carrier's liability in case of the loss of an interstate shipment of cattle to the agreed value of \$30 for each bull and \$20 for each cow, made to secure the lower of two rates on file with the Interstate Commerce Commission, was not forbidden by the provisions of the "Carmack Amendment" of June 29, 1906, prohibiting exemptions from the liability imposed by that act, although the true value of the cattle greatly exceeded this valuation, where they were loaded by the shipper, and were not seen by the company's agent, and it is not claimed that he was informed of their value or quality.<sup>5</sup>

The valuation named in shipping contract signed by the shipper is as much an agreed valuation within the meaning of the rule that a carrier, when its rates are graduated by value, may, under the "Carmack Amendment" of June 29, 1906, as though the shipper had stated the value on inquiry.<sup>6</sup>

Under the "Carmack Amendment" clauses in bills of lading, not in conflict with the published interstate rate limiting a common carrier's liability, are lawful, and in case of the loss of the goods the shipper can recover only the agreed value.<sup>7</sup>

Plaintiff shipped a carload of pig tin, consisting of 320 pigs of substantially the same size. Under the published interstate rates 23c per 100 lbs. was fixed for carload lots only, "released to valuation of \$100 per ton of 2,000 lbs., to be shown on bills of lading and shipper's invoice," and 30c per 100 lbs. without any limitation of liability. Plaintiff signed a bill of lading upon which was stamped the statement that in case of loss or damage to the property therein described, he would not assert claim against the carrier on a higher basis of value than \$100 per ton. Forty of the pigs were lost in transit. *Held*, That the limited liability applied to each part of the cargo, and the plaintiff was therefore not entitled to recover the full value of the tin lost so long as it did not exceed the value of the entire load, but was only entitled to recover \$100 per ton on the actual weight lost.<sup>8</sup>

Under the "Carmack Amendment" a shipper can recover of an express company on an interstate shipment only the agreed value



specified in the shipping receipt in case of loss or damage, where a higher published rate is applicable in case the liability is to be unlimited.<sup>9</sup>

1. *Great N. Ry. Co. v. O'Connor* (1914), 232 U. S. 508, 34 Sup. Ct. Rep. 380, 58 L. Ed. 703.
2. *Western Transit Co. v. Leslie & Co. Ltd.* (1917), 242 U. S. 448, 37 Sup. Ct. Rep. 133, 61 L. Ed. 423.
3. *American Express Co. v. United States Horse Shoe Co.* (1917), 244 U. S. 58, 37 Sup. Ct. Rep. 595, 61 L. Ed. 990.
4. *Kansas City S. Ry. Co. v. Carl* (1913), 227 U. S. 639, 36 Sup. Ct. Rep. 391, 57 L. Ed. 683.
5. *Missouri, K. & T. Ry. Co. v. Harriman Bros.* (1913), 227 U. S. 657, 33 Sup. Ct. Rep. 397, 57 L. Ed. 690.
6. *Ibid.*
7. *United Lead Co. v. Lehigh V. Rd. Co.* (N. Y. 1913), 141 N. Y. Supp. 310, 311.
8. *Ibid.*
9. *Jones v. Southern Express Co.* (Miss. 1913), 61 So. 165, 166; *American Express Co. v. Burke* (Miss. 1913), 61 So. 312, 313; *Pacific Express Co. v. Ross* (Tex. 1913), 154 S. W. 340, 343; *American Silver Mfg. Co. v. Wabash Rd. Co.* (Mo. 1913), 156 S. W. 830, 833; *Cincinnati, N. O. & T. P. Ry. Co. v. Dodd* (Ky. 1913), 156 S. W. 894, 895; *Aradalou v. New York, N. H. & H. Rd. Co.* (Mass. 1916), 114 N. E. 297; *Wegener v. Chicago & N. E. Ry. Co.* (Wis. 1916), 156 N. E. 201; *Frank v. Michigan C. Rd. Co.* (N. Y. 1915), 154 N. Y. Supp. 701; *Illinois C. Rd. Co. v. Wilson & Co.* (Tenn. 1915), 176 S. W. 1036; *Cudahy Packing Co. v. Bixby* (Mo. 1918), 205 S. W. 865.

2013-II. WHERE THE SHIPPER HAS THE CHOICE OF TWO RATES, HE IS ESTOPPED FROM DENYING THE VALIDITY OF A LIMITED-LIABILITY CONTRACT ENTERED INTO IN GOOD FAITH BY BOTH SHIPPER AND CARRIER.

It is well settled that when a carrier has two rates assessable on a certain commodity, one applicable when the value of the property is declared by the shipper not to exceed a certain sum per hundredweight, and the other when the value is declared to exceed that sum, or is not declared at all, a shipper who has declared the lower value, and thereby obtained the advantage of the lower rate, is estopped, in case the property is lost, from recovering on the basis of a higher valuation than he has declared.<sup>1</sup>

In *Memphis Freight Bureau v. Adams Express Co.*<sup>2</sup> the Interstate Commerce Commission stated: "Under the law it is the duty of shippers of property of more than ordinary value to bill the same at its true value in order that the legal rate may be applied. In the case of a shipper declaring a false value to secure a reduced rate one of the penalties under this form of receipt is an estoppel by which he is precluded, in case of loss or damage, from denying the correctness of such value so given.

"Neither is it conformable to plain principles of justice that a shipper may understate the plain value of his property for the purpose of reducing the rate and then recover a larger value in case of loss. Nor does a limitation based upon an agreed value for the purpose of adjusting the rate conflict with any sound principle of public policy. *Adams Express Co. v. Croninger*, 226 U. S. 491."

The valuation declared or agreed upon, as evidenced by the contract of shipment upon which the published tariff rate is established, is conclusive between the parties.<sup>3</sup>

1. *American Brake Shoe & Foundry Co. v. Pere Marquette Rd. Co.* (1915), 223 Fed. Rep. 1018, 1020; citing, *Kansas City S. Ry. Co. v. Carl* (1913), 33 Sup. Ct. Rep. 391, 227 U. S. 639, 57 L. Ed. 683; *Missouri, K. & T. Ry. Co. v. Harriman Bros.* (1913), 227 U. S. 657, 33 Sup. Ct. Rep. 397, 57 L. Ed. 690.
2. *Memphis Freight Bureau v. Adams Express Co.* (1913), 28 I. C. C. Rep. 132, 138.
3. *United Lead Co. v. Lehigh V. Rd. Co.* (N. Y. 1913), 141 N. Y. Supp. 310, 311.

2013-I. RIGHT OF CARRIER TO RELY UPON THE STATEMENTS OF THE SHIPPER OR FORWARDER.

A carrier receiving from a forwarder engaged in combining shipments of various owners to secure carload rates, a carload shipment billed as household goods of small value, is not required, in the absence of anything to indicate false billing, to make special inquiry as to value, but may rely on the forwarder's statement that the car is loaded with goods of the character and value stated.<sup>1</sup>

A carrier has the right to assume, nothing to the contrary appearing, that a forwarder engaged in combining shipments of various owners to secure carload rates has the authority to agree upon the terms of shipment, and is therefore not bound by the private instructions of one of the owners.<sup>2</sup>

In *Great N. Ry. Co. v. O'Connor*<sup>3</sup> the United States Supreme Court, per Mr. Justice Lamar, stated: "For, although the Boyd Company was a forwarder, engaged in collecting a number of small shipments from various persons in order to fill a car and obtain the lower rates applicable to carload shipments, yet the railroad company was obliged to treat the forwarder as shipper, even though thereby the carrier lost the benefit of the higher rate which would have been applicable to separate and small shipments. This was the ruling in *Interstate Commerce Commission v. Delaware, L. & W. R. Co.*, 220 U. S. 235, 55 L. Ed. 448, 31 Sup. Ct. Rep. 392, where it was held that the carriers were not concerned with the question of title, but must treat the forwarder as shipper, and charge the rates applicable to the quantity of freight tendered regardless of who owned the separate articles. If the forwarder was shipper for the purpose of securing carload rates, it was also shipper for the purpose of classifying and valuing, in order to determine which tariff rate was applicable."

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1. *Great N. Ry. Co. v. O'Connor* (1914), 232 U. S. 508, 34 Sup. Ct. Rep. 380, 58 L. Ed. 703.

2. *Ibid.*

3. *Ibid.*

2013-J. WHERE BUT ONE RATE CARRYING A LIMITED-LIABILITY PROVISION IS ACCORDED, THE CONTRACT IS INVALID.

Where a carrier's agent is not authorized to accept shipments under the common-law liability and is only authorized to accept them for a limited liability under a higher rate, the contract limiting liability is invalid even though the shipper makes no demand to ship under the common-law liability.<sup>1</sup>

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1. *Cleveland, C. C. & St. L. Ry. Co. v. Hayes* (Ind. 1913), 102 N. E. 34, 41.

2013-K. REASONABLENESS OF LIMITED-LIABILITY PROVISION IN CONTRACT IN ABSENCE OF PUBLISHED SCHEDULE OF RATES.

If a schedule of rates on an interstate shipment has not been filed and published as required by the Interstate Commerce Act, then the reasonableness of the contract becomes a question of fact, and depends upon whether the value was declared for the purpose of obtaining the lower or two or more rates proportionate to the amount of the risk.<sup>1</sup>

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1. *Adams Express Co. v. Cook* (Ky. 1915), 172 S. W. 1096.



2013-L. UNREASONABLENESS OF TARIFF PROVISIONS GOVERNING RELEASED OR DECLARED VALUATION RATES.

In *Climax Molybdenum Co. v. Director General, as Agent, Ann Arbor Rd. Co.*<sup>1</sup> the Interstate Commerce Commission stated:

"The tariff publishing the rate from Climax to Denver contained the following provision under the caption 'Assessment of Charges on Shipments of Ore and Concentrates' (item No. 535):

"Shipments will be way-billed at the rate applying on ore valued at \$100 per ton of 2,000 pounds. If consignee or his agent shall, after receipt of shipment at destination, deliver to the agent of the carrier at that point a certificate of a sampler or smelting company showing that the valuation of the ore (without deductions for freight, sampling, smelting or other charges), is such as to entitle it to the lower rates named in the Tariff or as amended, the billing and charges will be corrected accordingly.

"Complainant contends that under the foregoing provision its shipments should have been billed and charges collected at the 19-cent rate applicable on ore and concentrates ranging in value from \$12 to \$100 per ton. Its traffic manager testifies that, notwithstanding its requests to be accorded this rate, defendant refused to accept complainant's shipments unless the bills of lading bore the notation, 'Value over \$100 per net ton,' and assessed charges accordingly under the 25-cent rate. Defendant points out that item No. 5170 bore reference to item No. 535, while items Nos. 5175 and 5180 did not, and explains that item No. 535 was incorporated in its tariff at a time when no ore worth more than \$100 per ton was being shipped, and was intended to enable shippers whose ore is worth \$12 or less per ton to obtain the lower rate. To adopt the construction contended for by complainant would defeat the clear intent of the tariff, as evidenced by the specific language of item No. 5180, to the effect that the 25-cent rate applies to shipments of ore and concentrates having an actual gross value in excess of \$100 per net ton. We find that the 25-cent rate collected was legally applicable on complainant's shipments.

"In the case at bar the evidence shows that defendant's general freight agent had sufficient knowledge as to the true value of complainant's product to require the notation 'Value over \$100 per net ton' to be placed on the bills of lading to prevent misdescription. This was in no sense 'the value declared in writing by the shipper or agreed upon in writing as the released value of the property' within the purview of the second Cummins amendment. Billing so indorsed does not limit the shipper's recovery of the full actual value whatever it might be.

"If defendant desires to carry rates on ore based upon declared or released values it should seek approval of rules that will clearly effect the purpose and be free from question as to conformity with the Cummins amendment. It might well also provide a specific rate on the molybdenite ore or concentrates."

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1. *Climax Molybdenum Co. v. Director General, as Agent, Ann Arbor Rd. Co.* (1921), 61 I. C. C. Rep. 369, 371.

2013-M. A CARRIER MAY NOT BY CONTRACT CHANGE ITS OBLIGATION AS A COMMON CARRIER INTO THAT OF A FORWARDER ONLY.

An interstate carrier may, by fair, open, and reasonable agreement, limit the amount recoverable, by the shipper, in case of injury to the property being transported, to an agreed value, made for the purpose of obtaining a lower of two legal rates, proportioned to the

amount of the risk, but it cannot, by such contract, divest itself of the obligations of a common carrier and change itself into a forwarder only.<sup>1</sup>

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1: *Missouri, O. & G. Ry. Co. v. French* (Okla. 1915), 152 Pac. 591.

#### 2013-N. LIVE STOCK RATES DEPENDENT UPON DECLARED VALUE.

Under Section 20 (11) of the Interstate Commerce Act (*as amended June 9, 1916*), the Interstate Commerce Commission may authorize or require rates dependent upon declared value on property except ordinary live stock and defines the term "ordinary live stock" to include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses.

The rates on ordinary live stock may no longer be made dependent upon actual, declared, or released value, but such rates may obtain on fancy, blooded, or racing stock or stock chiefly valuable for other special purposes.<sup>1</sup>

See "*Express rates dependent upon declared or released valuation*," *Section 2013-O, post*.

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1. Live Stock Classification (1917), 47 I. C. C. Rep. 335. In this case the Commission's finding in *National Society of Record Associations v. Aberdeen & R. Rd. Co.* (1916), 40 I. C. C. Rep. 347, respecting minimum weights in Official and Southern Classification Territories is modified and the order therein vacated and set aside in so far as it pertains to minimum weights of less than carload and to standard or basic values on ordinary live stock.

#### 2013-O. EXPRESS RATES DEPENDENT UPON DECLARED OR RELEASED VALUATION.

The following is the report and order of the Interstate Commerce Commission in *In the Matter of Express Rates, Practice, Accounts, and Revenues—Released Rates*.<sup>1</sup>

"For many years, if not from the origin of the express business, the principal express companies, hereinafter called petitioners, maintained rates, dependent upon the value of the property as declared by the shipper, or as agreed upon for the purpose of determining the rate to be applied, by which declaration or agreement the shipper was bound. He was estopped from recovering more than that value in case of loss of or damage to the property. *Adams Express Co. v. Croninger*, 226 U. S., 491.

"Following our report of May 7, 1915, *In re the Cummins Amendment*, 33 I. C. C., 682, and responsive to supplemental order No. 13 in Docket No. 4198, petitioners, Adams Express Company, American Express Company, Canadian Express Company, Canadian Northern Express Company, Great Northern Express Company, National Express Company, New York & Boston Despatch Express Company, Northern Express Company, Southern Express Company, Wells Fargo & Company, Western Express Company, and Dominion Express Company, amended certain of their classification rules, also the uniform express receipt, effective June 2, 1915, to provide for the application of rates dependent upon the actual value of the property transported.



“By amendment approved August 9, 1916, so much of the Cummins amendment approved March 4, 1915, as reads as follows:

*“Provided, however, That if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce Commission may establish and maintain rates for transportation, dependent upon the value of the property shipped as specifically stated in writing by the shipper. Such rates shall be published as are other rate schedules.*

was amended to read as follows:

*“Provided, however, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary live stock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of this act to regulate commerce, as amended; and any tariff schedule which may be filed with the Commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the Commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term ‘ordinary live stock’ shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses.*

“Petitioners subsequently petitioned the Commission for an order authorizing the maintenance of express rates dependent upon the value of the property as declared in writing by the shipper or as agreed upon in writing, and submitted for approval proposed classification rules and form of express receipt, embracing changes that such an order would require. Thereupon we entered upon a hearing concerning the propriety of the issuance of such an order.

Representatives of shippers, hereinafter referred to as protestants, objected to that provision of the receipt requiring the presentation of certain classes of claims for loss or damage within four months, and to the establishment of rates for the transportation of ordinary live stock dependent upon the value of the stock transported. They urge an extension of the period for filing claims from four months to six months as fixed by carriers in freight bills of lading. The Cummins amendment makes it unlawful to fix a period for filing claims shorter than four months and provides:

*“That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery.*

“Petitioners interpret this proviso as limiting the application of the four months’ clause to claims arising out of undisclosed loss or damage, knowledge of which is peculiarly in possession of the consignee or claimant and for reasons that are obvious should, they say, be presented promptly. Protestants would offer no objection to the four months’ provided provided it is applied only to concealed loss and damage claims.

“The four months’ provision has been in force for a number of years, and prior to June 2, 1915, the effective date of the Cummins amendment, was applied to all claims for loss or damage. It is not in conflict with the provisions of the act and the evidence of record

does not warrant a finding that it is or would be unreasonable as applied to shipments by express.

"Forms of shipping contracts for live stock, paintings, statuary, and wax figures were also submitted by petitioners, but as the forms now in use were not prescribed by us, as were the classification, uniform receipt, etc., our approval is not necessary now. Obviously, however, such contracts should not contain any provisions that are in conflict with the terms of the act or with the conclusions reached herein.

"Respecting ordinary live stock as the term is defined in the amendment of August 9, 1916, it is urged by protestants that the maintenance of different rates for animals of the same class, according to the value of each, is by the amendment prohibited, and in support thereof they direct attention to the following expression in the report of the Senate Committee on Interstate Commerce which accompanied the bill:

"With respect to ordinary live stock as defined in the bill, there can be no rate dependent either upon agreed or released value, and in the event of loss or damage, the carrier must respond for the actual value of the property. The carrier will be permitted to make such rate on ordinary live stock as will compensate for the service, including liability, but the rate can not vary according to the value of each animal that may be loaded into a car. There will remain the right on the part of the carrier to classify different kinds of animals within the definition of ordinary live stock, but when so classified there can be no lawful variance in rates because one carload of such animals may be more valuable than another.

"They contend that rates for the transportation of ordinary live stock should be stated in cents per 100 pounds without reference to the value.

"Petitioners do not propose rates for the transportation of ordinary live stock dependent upon agreed or released value. They say that they have the right to maintain existing rates which are dependent upon the actual value of the live stock; and for the transportation of live stock, except that which is chiefly valuable for breeding, racing, show purposes, or other special uses, they apparently plan to continue their present rates. By way of illustration, the rates now applicable to shipments of horses are predicated upon a maximum value of \$200 per head. If the value exceeds that sum an additional charge is made for the excess value, which charge varies with the distance the shipment moves.

"The purpose of the amendment of August 9, 1916, as stated in the report of the Senate Committee on Interstate Commerce, was—

to restore the law of full liability as it existed prior to the Carmack amendment of 1906, so that when property is lost or damaged in the course of transportation under such circumstances as to make the carrier liable recovery is had for full value or on the basis of full value.

"It is clearly the purpose of the Cummins amendment, as amended, to invalidate all limitations of liability for loss, damage, or injury to ordinary live stock caused by the initial carrier or by another carrier to which shipment may be delivered or which may participate in transporting it, notwithstanding any representation or agreement or release as to value. While it does not appear to be the purpose of petitioners to attempt a limitation of liability, a continuance of the present method of stating rates for ordinary live stock would require a representation of the value, which is declared to be unlawful.

"The act, as amended, fixes upon the carrier liability for the full actual loss, damage, or injury caused by it to ordinary live stock and invalidates any limitation or attempted limitation of that liability,



wherever or in whatever form it is found. Ordinary live stock is excepted from the property as to which we are empowered to authorize or require the establishment of rates dependent upon declared or released value. If rates on ordinary live stock dependent upon declared value could lawfully be maintained without authorization by the Commission, there might and probably would be instances in which conflict would arise as between the liability imposed by the act upon the carrier and the prohibitions of section 10 of the act affecting shippers. We can not, in view of the provisions of the law, authorize or sanction such rates upon ordinary live stock; neither can they lawfully be maintained upon any other character of traffic except under authorization duly granted by the Commission. Under such authority both shipper and carrier are fully protected and the full spirit of the law is observed.

“The shipper or lawful holder of the receipt or bill of lading for ordinary live stock should be free to press his claim for recovery in full for loss, damage, or injury caused by the carrier, and rates for the transportation of such live stock may not be stated in a manner to require a representation of the value. This is not saying that value may not be considered and duly weighed as an element in determining what reasonable rates shall be established.

“As to live stock the order herein will apply only to that which is chiefly valuable for breeding, racing, show purposes, or other special uses.

“An order will be entered authorizing the maintenance of existing express rates dependent upon the declared or released value of the property transported, except ordinary live stock, also authorizing the form of express receipt to be used.”

#### “SUPPLEMENTAL ORDER NO. 18.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 2d day of April, A. D. 1917.

No. 4198.

#### IN THE MATTER OF EXPRESS RATES, PRACTICES, ACCOUNTS, AND REVENUES.

#### RELEASED RATES.

THE ADAMS EXPRESS COMPANY, AMERICAN EXPRESS COMPANY, CANADIAN EXPRESS COMPANY, THE CANADIAN NORTHERN EXPRESS COMPANY, DOMINION EXPRESS COMPANY, GREAT NORTHERN EXPRESS COMPANY, NATIONAL EXPRESS COMPANY, NEW YORK & BOSTON DESPATCH EXPRESS COMPANY, NORTHERN EXPRESS COMPANY, SOUTHERN EXPRESS COMPANY, WELLS FARGO & COMPANY, AND WESTERN EXPRESS COMPANY, RESPONDENTS.

“*It appearing*, That on October 10, 1916, the Commission entered upon an investigation concerning the propriety of the issuance of an order authorizing the maintenance of express rates dependent upon the value declared in writing by the shipper or agreed upon in writ-

ing as the released value of the property, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and its conclusions thereon, which report is hereby referred to and made a part hereof:

*"It is ordered,* That the respondents be, and they are hereby, authorized to establish, upon not less than 10 days' notice to the Interstate Commerce Commission and the general public, by filing and posting in the manner prescribed in section 6 of the act to regulate commerce, the following classification rules, to wit:

"Rates named in tariffs governed by this classification, except as to ordinary live stock, are dependent upon and vary with the declared or released value of the property, and, except as to live stock chiefly valuable for breeding, racing, show purposes, or other special uses, other live animals named and not named herein, live birds, live pigeons, live poultry, and reptiles, are based upon property declared to be of, or released to, a value not exceeding \$50 for any shipment of 100 pounds or less, or not exceeding 50 cents per pound actual weight for any shipment in excess of 100 pounds. When the declared or released value exceeds that above stated, except as to paintings, pictures, statuary, and wax figures of a declared or released value exceeding \$550, the rates are 10 cents greater for each \$100 or fraction thereof in excess of the value stated above.

"When the declared or released value of any shipment of paintings, pictures, statuary, or wax figures exceeds \$550, or 50 cents per pound when the weight is more than 1,100 pounds, the rates will be greater for each \$100 or fraction thereof in excess of such value, as follows:

"Between points where the first-class rate per 100 pounds:

	Cents.
Does not exceed \$1.00.....	25
Exceeds \$1.00 but not \$3.00.....	30
Exceeds \$3.00 but not \$5.00.....	35
Exceeds \$5.00 but not \$8.00.....	40
Exceeds \$8.00.....	50

"Rates applicable to live stock (cattle, swine, sheep, goats, horses, and mules) chiefly valuable for breeding, racing, show purposes, or other special uses, other live animals named herein, live birds, live pigeons, live poultry, reptiles, and wild animals not named herein are based upon the following maximum values:

	Each.
Horses, jacks, jennies, mules.....	\$200.00
Bulls .....	100.00
Colts under one year, ponies.....	75.00
Cows, calves six months or over, oxen, steers.....	75.00
Calves under six months, deer, elk, goats, hogs, sheep.....	25.00
Burros, dogs, ostriches.....	50.00
Camels .....	200.00
Elephants .....	250.00
Wild animals not otherwise named .....	50.00

"Birds, not otherwise named, cats, ferrets, guinea pigs, hares, mice, monkeys, opossums, pigeons, poultry, prairie dogs, rabbits, rats, skunks, squirrels, reptiles, each \$5; maximum value of any shipment not exceeding 100 pounds, \$50, or, when the weight exceeds 100 pounds, 50 cents per pound, actual weight.

When the declared or released value exceeds the maximum value stated above the rates will be increased as follows:

Between points where the first-class rate is not over \$2 per 100 pounds, 1 per cent of the excess value.

Between points where the first-class rate exceeds \$2 but not \$3 per 100 pounds, 1½ per cent of the excess value.

Between points where the first-class rate exceeds \$3 but not \$5 per 100 pounds, 2 per cent of the excess value.

Between points where the first-class rate exceeds \$5 per 100 pounds, 2½ per cent of the excess value.

*"It is further ordered,* That the said respondents be, and they are hereby, authorized, upon like notice, to amend the form and terms and conditions of the uniform express receipt so that they will read as follows:



*"It is further ordered,* That express classification rules filed under authority of this order shall show in connection therewith the following notation:

*"Issued under authority of Interstate Commerce Commission's supplemental order No. 18 of April 2, 1917, in case No. 4198.*

*"And it is further ordered,* That a copy of this order be served upon each of the parties to this proceeding.

*"By the Commission.*

[SEAL]

George B. McGinty,  
*Secretary."*

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1. In the Matter of Express Rates, Practices, Accounts, and Revenues—Released Rates (1917), 43 I. C. C. Rep. 510, et seq.

**2014. Liability of the initial carrier for the full actual loss, damage, or injury to the property transported, notwithstanding any limitation of liability, or limitation of the amount of recovery, or representation or agreement as to value.**

#### 2014-A. PROVISIONS OF THE STATUTE.

Section 20 (11) of the Interstate Commerce Act (*as amended June 29, 1906, March 4, 1915, and August 9, 1916*), provides as follows:

\* \* \* \* and any such common carrier, railroad, or transportation company, so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, *notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission*; and any such limitation without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void.

**2014-B. INVALIDITY OF A CONTRACT PROVISION THAT IN CASE OF LOSS OF GOODS THE LIABILITY OF THE CARRIER SHALL BE COMPUTED ON THE VALUE OF THE PROPERTY AT THE TIME AND PLACE OF SHIPMENT.**

In the case of *McCaull-Dinsmore Co. v. Chicago, M. & St. P. Ry. Co.*<sup>1</sup> it was held that under the "Cummins Amendment" of March 4, 1915, to the Interstate Commerce Act, which declared that carriers should be liable for the full actual loss, a common carrier, where wheat was lost in transit is liable for the value of the grain at the point of destination, notwithstanding the shipment was made under a contract known as the "Uniform Bill of Lading," which was part of the public tariffs filed with the Interstate Commerce Commission, and which provided that the loss shall be computed on the value of the property at the time and place of shipment; and it was further held that in case of non-delivery, the carrier's common-law liability is the value of the goods at the point of destination at the time they should have been delivered. Mr. District Judge Morris in delivering the opinion of the court stated: "The sole question in this case is whether the loss to the shipper is to be measured by the value of the property at the place of destination at the time it should have been delivered,

or by the value of the property at the time and place of shipment; and the decision of the question must depend upon whether or not the provision or stipulation in the bill of lading issued by the carrier and accepted and agreed to by the shipper, that the loss should be measured by the value at the time and place of shipment and settled on that basis was valid under the Cummins Amendment of March 4, 1915, to the Interstate Commerce Act, which was the law in force at the time of the shipment and of the loss. This amendment was passed after the decisions of the Supreme Court on the Carmack Amendment (Act June 29, 1906, \* \* \*) cited by counsel had been rendered, and it is apparent from its language that its proposal and enactment were caused by these decisions, and that it was aimed directly at them. Viewed in the light of those decisions and of the purpose evidently sought to be accomplished it is difficult to see how its language could be more sweeping:

"'Shall be liable \* \* \* for the full *actual loss* \* \* \* caused by it \* \* \* notwithstanding *any limitation* (the Italics are mine) of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and *any such limitation*, without respect to the manner or form in which it is sought to be made, is hereby declared to be unlawful and void.'

"This is the language of the amendment so far as it touches this case. The first proviso indicates the cases, of which this is not one, and the only cases, exempt from that language, and the only way in such cases of avoiding its terms, and this emphasizes and, if that were possible, makes more sweeping those terms. I do not see that it can make any difference under the language quoted that this bill of lading was provided for in the schedule of rates filed with the commission, and that that schedule of rates also provided another bill of lading under which if issued and accepted, the rate would have been higher.

"Under the language is the provision or stipulation above referred to in the bill of lading unlawful and void? If it is an agreement as to value, which I think it is not, it is clearly so. The answer to the question must therefore be found in the answer to the further question. Was this limitation of the liability of the carrier, or a limitation of the amount of recovery? And it seems to me the answer to this question is found in the answer to the further question: What would have been the liability of the carrier, and the consequent amount of the recovery, if that provision or stipulation had not been in the bill of lading? In the latter case there can be no question, and it was so admitted on the agreement, as it had to be, but that the liability and the consequent amount of the recovery would have been that of the common law, namely, the value of the goods at the point of destination at the time they should have been delivered; and that this is the actual loss to the shipper caused by the failure of the carrier to deliver the goods at that time and place, whether the value is greater or less than at the time and place of shipment, is the foundation of the common-law rule.

"From the foregoing simple statement, I do not see how it is possible to escape the conclusion, upon a fair and open-minded consideration of the language of the amendment and the obvious and well-known meaning of its terms, that this provision or stipulation in the bill of lading is a limitation of the liability of the carrier and of the amount of recovery, and is therefore unlawful and void. In reaching this conclusion I have not failed to consider the very able argument of counsel for defendant, and also what has been said by the Interstate



Commerce Commission, and it is with regret and not a little misgiving that I find myself in difference with men so able and experienced in such matters. But, consider the matter as I may, I am always irresistibly brought back to this simple statement and to the necessary conclusion therefrom.

"I cannot see that there could be any greater difficulty, after loss has occurred, in ascertaining and providing the value at the time and place of delivery or destination than in ascertaining and proving the value at the time and place of shipment. If it be true, as suggested in the argument and by the commission, as I think it may be, that the conclusion which I have reached will result in difficulties and confusion in existing rules and regulations, and schedules, in hardship and injustice to the carriers, and possibly in some discrimination amongst shippers, the remedy will be found in facing the law, whose language as it seems to me, is too plain for construction or evasion, squarely, and revising and reconstructing those rules and regulations to meet it."

In *Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co.*<sup>2</sup> the United States Circuit Court of Appeals, in affirming the judgment of the trial court, held that under Section 20 of the Interstate Commerce Act, as amended by the "Cummins Amendment" of March 4, 1915, providing that an interstate carrier of property shall issue a bill of lading therefor and shall be liable for any loss or damage to the property caused by it, or any other carrier when carried under a through bill of lading, and that no contract limiting such liability shall be valid, a provision of such bill of lading fixing the carrier's liability at the value of the property at the place and time of shipment, is a limitation, and is invalid, and not enforceable. Mr. Circuit Judge Stone, in delivering the opinion of the court, stated: "Action for loss of interstate shipment of grain. The facts were stipulated. The shipment was made under a bill of lading or shipping contract wherein it was provided that:

"The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property at the place and time of shipment under this bill of lading, including freight charges, if paid."

"The contract was in a form like that included in the legally published tariffs filed with the Interstate Commerce Commission, which tariffs provided, among other things, a rate of transportation based on and controlled by said form of bill of lading, and that, in cases where the shipper was not agreeable to shipping under the terms of such form, then a higher rate was to be charged. The fair market value of the shipment at destination at the time when it should have been delivered, with interest, and less freight charges, was \$1,422.11. The railway has paid thereon \$1,200.48, the value at origin at time of shipment. From a judgment for the difference the railway has taken its writ of error."

"The controversy is over the difference, and the sole question here presented is whether the origin value or the destination value should govern where the shipment was under such a form of interstate bill of lading. At the time of this shipment the so-called Cummins Amendment of March 4, 1915, \* \* \* contained the law in this respect governing form of contracts for interstate shipment. That statute provided:"

"That any common carrier, railroad or transportation company subject to the provisions of this act receiving property for transportation from a point in one state or territory or the District of Columbia to a point in any other state, territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any

common carrier, railroad, or transportation company which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading and no contract, receipt, rule, regulation, or other limitation of any character whatsoever, shall exempt such common carrier, railroad or transportation company from the liability hereby imposed; and any such common carrier, railroad or transportation company so receiving property for transportation from a point in one state, territory or the District of Columbia to a point in another state or territory, or from a point in a state or territory from a point in a state or territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a territory shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company in which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void; Provided, however, that if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce Commission may establish and maintain rates for transportation, dependent upon the value of the property shipped as specifically stated in writing by the shipper. Such rates shall be published as are other rate schedules; Provided, further, that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law.'

"The railway seeks to avoid the application of this provision by contending that it, in the present instance, has not sought to limit its liability, but has, on the contrary, defined liability for the full, actual loss, and has by its tariffs thus crystallized the method of arriving at the actual loss. We deem such contention unsound. There was no uncertainty as to the time or place of estimating value under the rule of common law—it was the destination. The evident purpose of the provision in the bill of lading was not to introduce certainty, but to avoid the rule existing at law, for the obvious object of escaping a higher valuation, which would often arise at destination. Such a provision is unquestionably a limitation, since it forbids application of the established rule."

"The railway also says:

"The rule, as we contend, was that, in the absence of contract, destination value would apply, but that it was not unlawful to agree upon origin value."

"Whether the parties could so agree at the common law is not material. The Cummins Amendment was not concerned alone with preventing contracts already illegal under the common law, but with prohibiting all agreements having the effect defined by that statute. Congress passed this act to remedy the defects in the Carmack Amendment (Act June 29, 1906 \* \* \*) as developed in the case of *Adams Express Co. v. Croninger*, 226 U. S. 491, 33 Sup. Ct. 148, 57 L. Ed. 314, 44 L. R. A. (N. S.) 257, and intended thereby to fully and finally prevent all limitations of this character. Congressional Record, 63d Congress, 3d Session, Vol. 52, pp. 5446-5451. The judgment is affirmed."

In *Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co.*<sup>3</sup> the United States Supreme Court, in affirming the trial court and Circuit Court of Appeals, held that the stipulation in the uniform bill of lading that the amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property at the place and time of shipment, including freight charges, if paid, which is sanctioned by the Interstate Commerce Commission as in no way limiting the carrier's liability to less than the value of the goods, but as merely



offering the most convenient way of finding the value, but which does in fact prevent a recovery of the full actual loss, where the shipment would have been worth more at destination than at origin, is inconsistent with and invalidated by the provisions of the "Cummins Amendment" of March 4, 1915, that carriers shall be liable to the holder of the bill of lading for the full actual loss, damage, or injury, notwithstanding any limitation of liability or limitation of the amount of recovery, or representation or agreement as to value. Mr. Justice Holmes delivered the opinion of the court as follows: "This is an action for the loss of grain belonging to the plaintiff and delivered on November 17, 1915, to the defendant, the petitioner, in Montana, for transportation to Omaha, Nebraska. The grain was shipped under the uniform bill of lading, part of the tariffs filed with the Interstate Commerce Commission, by which it was provided that 'the amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property at the place and time of shipment under this bill of lading, including freight charges, if paid.' The Petitioner has paid \$1,200.48, being the amount of loss so computed but the value of the grain at the place of destination at the time when it should have been delivered, with interest, less freight charges, was \$1,422.11. The plaintiff claimed the difference between the two sums on the ground that the Cummins Amendment to the Interstate Commerce Act made the above stipulation void. The district court gave judgment for the plaintiff (252 Fed. 664), and the judgment was affirmed by the circuit court of appeals. (171 C. C. A. 561, 260, Fed. 835.)

"The Cummins Amendment Act of March 4, 1915 \* \* \* provides that the carriers affected by the act shall issue a bill of lading and shall be liable to the lawful holder of it 'for any loss, damage or injury to such property . . . and no contract, receipt, rule, regulation or other limitation of any character whatsoever, shall exempt such common carrier . . . from the liability hereby imposed,' and further that the carrier 'shall be liable . . . for the full actual loss, damage or injury . . . notwithstanding any limitation of liability or limitation of the amount of recovery, or representation or agreement as to value in any such receipt or bill of lading or in any contract, rule, regulation, or in any tariff filed with Interstate Commerce Commission; and any such limitation without respect to the manner or form in which it is sought to be made, is hereby declared to be unlawful and void.' Before the passage of this amendment the Interstate Commerce Commission has upheld the clause in the bill of lading, as in no way limiting the carriers liability to less than the value of the goods, but merely offering the most convenient way of finding the value, *Shaffers v. Chicago R. I. & P. R. Co.*, 21 Inter. Com. Rep. 8, 12.<sup>4</sup> In a subsequent report upon the amendment it considered that the clause was still valid, and not forbidden by the law. 32 Inters. Com. Rep. 682, 693.<sup>5</sup> The argument for the petitioner suggests that courts are bound by the Commission's determination that the rule is a reasonable one. But the question is of the meaning of a statute and upon that, of course, the courts must decide for themselves.

"We appreciate the convenience of the stipulation in the bill of lading and the arguments urged in its favor. We understand that it does not necessarily prevent a recovery of the full actual loss, and that if the price of wheat had gone down, the carrier might have had to pay more under this contract than by the common-law rule. But the ques-

tion is how the contract operates upon its case. In this case it does prevent a recovery of the full actual loss, if it is enforced. The rule of the common law, is not an arbitrary fiat, but an embodiment of the plain fact that the actual loss caused by breach of contract is the loss of what the contractee would have had if the contract had been performed, less the proper deductions, which have been made and are not in question here. It seems to us, therefore, that the decision below was right, and as, in our opinion, the conclusion is required by the statute, neither the convenience of the clause, nor any argument based upon the history of the statute or upon the policy of the later Act of August 9, 1916, chap. 301, 39 Stat. at L. 441, Comp. Stat. \* \* \*, can prevail against what we understand to be the meaning of the words. Those words seem not only to indicate a broad general purpose, but to apply specifically to this very case. Judgment affirmed."

1. *McCaull-Dinsmore Co. v. Chicago, M. & St. P. Ry. Co.* (1918), 252 Fed. Rep. 664; affirmed, *Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co.* (1919), 260 Fed. Rep. 835, 171 C. C. A. 561; writ of certiorari granted, *Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co.* (1920), 64 L. Ed. 409, 251 U. S. 549, 40 Sup. Ct. Rep. 219. Affirmed, *Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co.* (1920), 253 U. S. 97, 64 L. Ed. 801, 40 Sup. Ct. Rep. 504.
2. *Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co.* (1919), 260 Fed. Rep. 835, 171 C. C. A. 561; affirming *McCaull-Dinsmore Co. v. Chicago, M. & St. P. Ry. Co.* (1918), 252 Fed. Rep. 664. Affirmed, *Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co.* (1920), 253 U. S. 97, 64 L. Ed. 801, 40 Sup. Ct. Rep. 504.
3. *Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co.* (1920), 252 U. S. 97, 64 L. Ed. 801, 40 Sup. Ct. Rep. 504, affirming, *Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co.* (1919), 260 Fed. Rep. 835, 171 C. C. A. 561, affirming, *McCaull-Dinsmore Co. v. Chicago, M. & St. P. Ry. Co.* (1918), 252 Fed. Rep. 664; *Southern P. Co. v. Crenshaw* (Ga. 1910), 5 Ga. App. 675, 689, 65 S. E. 865; *Mueller v. Chicago, B. & Q. Rd. Co.* (Nebr. 1910), 85 Nebr. 458, 466, 123 N. W. 449; *O'Connor v. Great N. Ry. Co.* (Minn. 1912), 136 N. W. 743, 745; *Vigoroux v. Platt* (1911), 115 N. Y. Supp. 880; *Schutte v. Weir* (1912), 111 N. Y. Supp. 240; *Drake v. Nash. C. & St. L. Ry. Co.* (Tenn. 1911), 148 S. W. 214, 218.
4. In *Shaffer v. Chicago, R. I. & P. Ry. Co.* (1911), 21 I. C. C. Rep. 8, 12, which was overruled by the United States Supreme Court, the Interstate Commerce Commission held as follows: "The provision in the uniform bill of lading, that, 'the amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence,' not found to have operated in an unreasonable or unlawful manner in connection with the shipment involved. Complaint dismissed."
5. In *In Re The Cummins Amendment* (1915), 33 I. C. C. Rep. 682, 693, the holding of the Interstate Commerce Commission which was overruled by the United States Supreme Court, is as follows: "2. May the carriers lawfully provide in their tariffs and rate schedules that their liability shall be for the full value of the property at the time and place of shipment?"

"It is argued that such a provision would be neither a limitation of the amount of recovery nor a representation or agreement as to value within the meaning of the new law. It is urged that this rule would relieve the question of the amount of liability from uncertainty, would afford a reasonable and uniform method of determining the measure of recovery, save endless litigation with its attendant labor and expense, and avoid unjust discriminations.

"The Cummins amendment clearly places upon the carriers liability for the full actual loss, damage, or injury to the property transported which is caused by them, and it makes unlawful any limitation of that liability, or of the amount of recovery thereunder, in any receipt, bill of lading, contract, rule, regulation, or tariff filed with this Commission, without respect to the manner or form in which such limitation is sought to be made. The loss or damage must, apparently, be either as of the time and place of shipment, time and place of loss or damage, or time and place of destination. Where rates are lawfully dependent upon declared values, the property and the rates are classified according to the character of the property, of which the value of the property may constitute an element, and such classification is necessarily as of the time and place of shipment. It is therefore believed that the liability of the carrier may be limited to the full value of the property so classified and established as of the time and place of shipment."

Under the logic of the decision of the United States Supreme Court in *Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co.*, supra, the decision in the *Springfield Light, Heat & Power Co. v. Norfolk & W. Ry. Co.* (1919), 260 Fed. Rep. 254, 261, is obviously erroneous.



2014-C. EFFECT OF STIPULATION IN THE BILL OF LADING THAT THE AMOUNT OF LOSS OR DAMAGE SHALL BE COMPUTED ON BASIS OF VALUE OF PROPERTY AT TIME AND PLACE OF SHIPMENT, WHERE THE PREVAILING MARKET PRICE AT DESTINATION IS LOWER.

In the case of *Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co.*<sup>1</sup> Mr. Justice Holmes, in rendering the opinion of the court holding that the stipulation in the uniform bill of lading that the amount of any loss or damage for which any carrier is liable shall be computed on basis of the value of the property at time and place of shipment could not prevent the shipper from recovering the value of the shipment at place of destination at the time when it should have been delivered, stated: "We appreciate the convenience of the stipulation in the bill of lading and the arguments urged in its favor. We understand that it does not necessarily prevent a recovery of the full actual loss, and that *if the price of wheat had gone down, the carrier might have had to pay more under this contract than by the common-law rule.* But the question is how the contract operates upon this case. In this case it does not prevent a recovery of the full actual loss, if it is enforced. The rule of the common law is not an arbitrary fiat, but an embodiment of the plain fact that the actual loss caused by the breach of a contract is the loss of what the contractee would have had if the contract had been performed, less the proper deductions which have been made and are not in question here."

From the above statement by Mr. Justice Holmes it would seem that a stipulation in a contract of shipment of a limitation of liability or limitation of the amount of recovery, is not, *ipso facto*, unlawful and void, but such stipulation becomes so if when enforced it operates to prevent a recovery by the shipper of the full actual loss. So that a stipulation providing that "*the amount of any loss or damage for which any carrier is liable shall be computed on basis of the value of the property at place and time of shipment under this bill of lading including freight charges, if paid,*" becomes null and void where its enforcement would prejudice the right of the shipper to recover the full actual loss, damage, or injury to the property transported. It would, therefore, seem that the test to be applied in passing upon the validity of any stipulation in a bill of lading or contract of shipment is whether that particular rule, if enforced, would have the effect of preventing the shipper from recovering the full actual loss, damage, or injury to the property sustained by him by reason of the carrier's default.

The easiest and most effective way for the carrier to escape the consequences of such a provision which has heretofore been generally embodied in shipping contracts, is to eliminate that clause from the bill of lading. As stated by Mr. District Judge Morris in *McCaull-Dinsmore Co. v. Chicago, M. & St. P. Ry. Co.* (1918), 252 Fed. Rep. 664; "If it be true, as suggested in the argument by the Commission, as I think it may be, that the conclusion which I have reached will result in difficulties and confusion in existing rules and regulations and schedules, and in some cases, under these rules and regulations and schedules, in hardship and injustice to the carriers, and possibly in some discrimination amongst shippers, the remedy will be found in facing the law, whose language, as it seems to me, is too plain for construction or evasion, squarely, and revising and reconstructing those rules and regulations to meet it."

The effect on the liability of the carrier on a shipment which moves under a bill of lading containing the clause that the loss shall be computed "on basis of the value of the property at place and time of shipment," where the amount realized upon the sale of property at destination is less, is well illustrated by the decision of the United States Supreme Court in the case of *Gulf, C. & S. F. Ry. Co. v. Texas Packing Co.*<sup>2</sup> although it should be noted that the cause of action in this case arose prior to the enactment of the "Cummins Amendment" of March 4, 1915, the shipments having been made during December, 1910 and January, 1911, it was there held that the difference between the invoice price of an interstate shipment at the place of shipment in Texas and the value of the same in its damaged condition at the time of its delivery at Chicago, the new destination to which it was diverted upon the shipper's request without issuing new bills of lading, is the proper measure of damages for a loss caused by the carrier's failure to re-ice, where it is fairly inferable from the evidence that the original bills of lading, which provided that the loss should be computed "on the basis of the value of the property (being the bona fide invoice price if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment," were continued in force by the action of the parties, simply changing the place of destination from St. Louis to Chicago, and remained binding contracts when the carriers accepted the diversion of the shipment. Mr. Justice Day, among other things, stated: "Apart from the stipulation of these bills of lading, the ordinary measure of damages in cases of this sort is the difference between the market value of the property in the condition in which it should have arrived at the place of destination and its market value in the condition in which, by reason of the fault of the carrier, it did arrive. *New York, L. E. & W. R. Co. v. Estill*, 147 U. S. 591, 616, 37 L. ed. 292, 304, 13 Sup. Ct. Rep. 444. The stipulations of these bills of lading changed this rule in the requirement that the invoice price at the place of shipment should be the basis for assessing the damages."

1. *Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co.* (1920), 253 U. S. 97, 64 L. Ed. 801, 40 Sup. Ct. Rep. 504.
2. *Gulf, C. & S. F. Ry. Co. v. Texas Packing Co.* (1917), 244 U. S. 31, 37 Sup. Ct. Rep. 487, 61 L. Ed. 970.

2014-D. ALLOWANCE OF ATTORNEYS' FEES IS UNAUTHORIZED IN SUITS UNDER SECTION 20 OF THE ACT.

See "*Allowance of attorneys' fees is unauthorized in suits under Section 20 of the Act*," Section 2031-E, *post*.

2014-E. RESUMÉ OF SHIPPER'S MEASURE OF RECOVERY FOR LOSS, DAMAGE, OR INJURY TO PROPERTY TRANSPORTED IN INTERSTATE COMMERCE.

See "*Resumé of shipper's measure of recovery for loss, damage, or injury to property transported in interstate commerce*," Section 2031-A, *post*.

2014-F. REPLACEMENT VALUE OF PROPERTY DESTROYED IN TRANSIT AS MEASURE OF RECOVERY.

In *Baltimore & O. C. T. Rd. v. Becker Milling Machine Co.*<sup>1</sup> the Circuit Court of Appeals, Seventh Circuit, per Mr. Circuit Judge Baker, stated: "Railroad Company, defendant, admitted its liability for destruction of two milling machines, property of Becker Company,



plaintiff, in transit from Chicago to Boston, and the only litigated question was the amount of recovery. Trial was had before the District Court without a jury.

"Plaintiff at Boston was manufacturer of a particular type of milling machine devised by it, and it owned the special plans, prints, patterns, dies, jigs, tools, etc., necessary for manufacturing. It also had its selling arrangements through which alone these machines, when new, could be purchased by users.

"Users of these machines were manufacturers of various steel products who procured them at the most convenient machinery center from independent firms or corporations that were acting as 'manufacturers' agents,' and installed them as plant equipment.

"Having a larger demand in 1916 to 1918 than it could supply through its own factory, plaintiff engaged Miehle Company of Chicago to fabricate two hundred of these machines. Under this arrangement Miehle Company furnished its factory, the raw materials and the labor, and plaintiff furnished the special prints, patterns, dies, tools, etc., through which alone these machines could be made, and also its own mechanical engineer to inspect materials and workmanship during manufacture in order to see that the machines as finished corresponded to specifications.

"Plaintiff was given judgment for \$4,010 for each machine. From evidence of demand for the machines and numerous sales by the aforesaid 'manufacturers' agents' at that unvarying price, fixed by plaintiff, the court found that such was their 'market value.' And now plaintiff contends that the judgment is unassailable because such finding of fact was not properly questioned, and because, even if it had been, it is supported by the undisputed evidence. True, the finding of 'market value' based on sales as aforesaid must stand; but *the ultimate fact for the court to find as the only legal basis of recovery was the amount of money that would make plaintiff whole for the destruction of the machines.* And if the uniform price that users were paying to the 'manufacturers' agents' for plaintiff's machines was not the true measure of plaintiff's loss, defendant's objections to the adoption of that standard must be considered.

"Defendant's first insistence is that the recovery should have been limited to \$1,850 for each machine, that being the amount plaintiff paid Miehle Company for fabrication. Manifestly the cost of replacement was more, for we know from common knowledge that the expense of maintaining engineering and experimental departments in factories, as well as expense for superintendence and all other proper items of overhead, must be apportioned to product and charged as parts of the manufacturing cost. Defendant engaged to deliver the machines at Boston, and therefore must compensate plaintiff for the loss caused by the failure to deliver. As defendant was not guilty of any intentional wrong, and as no special use of the machines by plaintiff to bring *Hadley v. Baxendale*, 9 Exch. 341, into the case was shown, plaintiff was entitled only to compensation. And manufacturing cost is not necessarily commensurate with compensation. If, the machines having been delivered, plaintiff would have made a net profit above manufacturing cost, that would have been its good fortune; and if a loss had resulted, plaintiff would have had to bear it. There is no objection to profits as such; it is only when an attempt to ascertain them leads to conjecture and speculation that profits are rejected.

“Against adoption of the \$4,010 that purchasers had to pay for a Becker machine as the measure of plaintiff’s damage, defendant argues that, because there was no market place or public exchange in which by competitive offers and bids the ‘market price’ of these machines could be determined, they had no ‘market price’ from which the court could find their ‘market value.’ Thus defendant would admit liability to the grower of inspected and graded wheat, which is bought and sold in public markets or exchanges, for the amount purchasers were willing to pay, but would deny liability to the maker of a specific type of automobile, which could be purchased only through the maker’s selling arrangements, for the amount purchasers were willing to pay. It seems clear to us that in either case the amount purchasers were willing to pay would be evidence of the sales value.

“In their discussion of ‘market price’ as evidence of ‘market value’ and of ‘market value’ as measurement of plaintiff’s damage the parties have cited numerous cases. By plaintiff: *Hetland v. Bilstad*, 140 Iowa, 411, 118 N. W. 422; *Sanford v. Peck*, 63 Conn. 486, 27 Atl. 1057; *City of Paris v. Baldwin Bros.*, 169 Ky. 802, 185 S. W. 144; *M. K & T. Ry. Co. v. Crews*, 54 Tex. Civ. App. 548, 120 S. W. 1110; *Parish & Co. v. Yazoo & M. V. Ry. Co.*, 103 Miss. 288, 60 South. 322; *Fort Worth & D. C. Ry. Co. v. Hapgood* (Tex. Civ. App.) 210 S. W. 969; *Home Construction Co. v. Church*, 14 Ky. Law Rep. 807; *Buford & Co. v. McGetchie*, 60 Iowa, 298, 14 N. W. 790; *Garlington v. Fort Worth & D. C. Ry. Co.*, 34 Tex. Civ. App. 274, 78 S. W. 368; *Schall v. Northland Motor Car Co.*, 123 Minn. 214, 143 N. W. 357; *State v. Meysenburg*, 171 Mo. 1, 71 S. W. 229; *Carr v. Moore*, 41 N. H. 131; *Budd v. Van Orden*, 33 N. J. Eq. 143.

By defendant: *Lovejoy v. Michels*, 88 Mich. 15, 49 N. W. 901, 13 L. R. A. 770; *Grand Tower Co. v. Phillips*, 23 Wall. 471, 23 L. Ed. 71; *Davis v. Grand Rapids School Furniture Co.*, 41 W. Va. 717, 24 S. E. 630; *Rau v. Seidenberg*, 53 Misc. Rep. 386, 104 N. Y. Supp. 798; *Carey Lithograph Co. v. Magazine & Book Co.*, 70 Misc. Rep. 541, 127 N. Y. Supp. 300; *Henry v. North Am. Ry. Const. Co.*, 158 Fed. 79, 85 C. C. A. 409; *Marsh v. McPherson*, 105 U. S. 709, 26 L. Ed. 1139; *McFadden v. Henderson*, 128 Ala. 221, 29 South. 640; *Theiss v. Weiss*, 166 Pa. 9, 31 Atl. 63, 45 Am. St. Rep. 638; *Lawrence v. Porter*, 63 Fed. 62, 11 C. C. A. 27, L. R. A. 167; *Pittsburgh Sheet Steel Mfg. Co. v. West Penn. Sheet Steel Co.*, 201 Pa. 150, 50 Atl. 935; *Foss v. Heineman*, 144 Wis. 146, 128 N. W. 881; *Salmon v. Helena Box Co.*, 147 Fed. 408, 77 C. C. A. 586; *Warren v. Stoddart*, 105 U. S. 224, 26 L. Ed. 1117; *Morris v. Supplee*, 208 Pa. 253, 57 Atl. 566; *Wicker v. Hoppock*, 6 Wall. 94, 18 L. Ed. 752; *Crowley v. Burns Boiler Mfg. Co.*, 100 Minn. 178, 110 N. W. 969; *Wade McHenry Lumber Co. v. Frank Spangler Co.*, 230 Fed. 418, 144 C. C. A. 560.

“For the purpose of determining whether the ‘market value’ correctly measured plaintiff’s loss we note certain additional cases. *Hetzel v. B. & O. R. Co.*, 169 U. S. 26, 38, 18 Sup. Ct. 255, 42 L. Ed. 648; *Prussian Nat. Ins. Co. v. Lawrence*, 221 Fed. 931, 137 C. C. A. 501, L. R. A. 1915E, 489, and note; *Mechanics’ Ins. Co. v. Hoover Distilling Co.*, 182 Fed. 590, 105 C. C. A. 128, 31 L. R. A. (N. S.) 873; *Chicago G. W. Ry. Co. v. Gitchell*, 95 Ill. App. 1.

“Cases cited by the parties have to do with breaches of sales contracts. In controversies of that character the thing destroyed is the sales contract, and the plaintiff, either seller or buyer, is entitled to compensation for the loss occasioned by its destruction. That loss is



measured by the distance between the contract price at one end and the market price as evidence of market value at the other; and there is no reason for inquiring what selling costs or what buying costs were incurred in making the original sale and purchase because seller and buyer met and each included all his costs in agreeing upon the price; and similarly if the plaintiff has fixed his loss by a resale or a repurchase (it being immaterial whether he has or not, for the measure of his damage is the same in either event), the costs of resale or repurchase are included in the new price; and neither party to the suit should be permitted to add to or subtract from the difference between contract price and market value an expense that has been satisfied in the new price.

"Is a manufacturer whose finished articles are destroyed entitled to recover what purchasers were willing to pay against a defendant who is only liable to make good the manufacturer's actual loss? We had hoped to find an answer in cases against carriers or against insurers; but we have found no case in which the question of the defendant's right to have deducted from the 'market value' the manufacturer's selling costs has been explicitly considered. When the property was destroyed where there was no local market, it has been held that, if the property was produced to sell, the plaintiff was entitled to the market value at the nearest fair market, less the costs of transportation to that market; and, if the property was held for use at the place of destruction, the plaintiff was entitled to the market value at the nearest fair market, plus the costs of transportation from that market to the place of use. It may be said that the courts have decided, *sub silentio*, that no other costs are to be taken into account. And in many cases the question of selling expense might be trivial, as where the deerhunter shoots the calf and the farmer proves that buyers come regularly to his farm and offer a certain price for like calves. If that were true in all cases, the question might be ignored by virtue of the maxim, *de minimis*. But from the present record the question obtrudes as one of material consequence. Plaintiff's selling arrangements were through 'manufacturers' agents.' The unavoidable inference from the evidence is that these 'manufacturers' agents' were purchasers of plaintiff's machines on their own account for resale at \$4,010, or that they were selling agents on commission. And so plaintiff's net receipts would be either its wholesale price or its retail price less commission. On manufactured articles, of which the maker has exclusive control, and the selling price of which runs into the thousands, discounts from list prices or commissions on sales frequently reach or exceed 25 per cent. Even if these 'manufacturers' agents' were branch houses of plaintiff, the question would not be materially different. Plaintiff in no event would be entitled to more than compensation for its actual loss; and the burden was on plaintiff to show what that loss was with that degree of certainty of which the case is capable.

"This must be so unless defendant is to be treated as though it had made a contract to buy these machines from plaintiff at \$4,010 each. But that would be an assumption contrary to fact. What defendant destroyed was machines, not a sales contract; and *plaintiff's loss must be determined by looking only to that which was in fact destroyed*.

"The judgment is reversed and the cause remanded for consensual proceedings."

1. Baltimore & O. C. Terminal Rd. Co. v. Becker Milling Machine Co. (1921), 272 Fed. Rep. 933.

**2015. Liability of the initial carrier for damages sustained by reason of delay to property transported in interstate and foreign commerce.**

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**2015-A. DUTY OF THE CARRIER TO TRANSPORT PROPERTY WITH REASONABLE DISPATCH.**

It is the duty of a carrier to transport a shipment with reasonable dispatch, and it is liable for failure to do so. This liability attaches despite a provision in the bill of lading that the carrier does not guarantee any set schedule. In an action for unreasonable delay in delivery of an interstate shipment, the burden of proof is not governed by State law making mere failure to transport within a reasonable time *prima facie* evidence of negligent delay; the question of burden of proof being a matter of substance, is not subject to control by laws of the several states.<sup>1</sup>

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1. *McMickle v. Wabash Ry. Co.* (Mo. 1919), 209 S. W. 611.

**2015-B. LIABILITY OF CARRIER FOR UNREASONABLE DELAY IN THE TRANSPORTATION OF PROPERTY.**

The common-law duty required the carrier to transport and deliver within a reasonable time; and any failure of this duty to transport and deliver within a reasonable time renders the carrier liable for all the consequences.<sup>1</sup>

The duty to deliver safely, and the duty to deliver in due time are distinct obligations.<sup>2</sup>

The "Carmack Amendment" does not take away the right of the shipper to maintain an action on the common-law liability of the carrier for the negligent delay in the shipment of live stock resulting in loss by shrinkage and a decline in the market, although the same be an interstate shipment. However, as to interstate shipments, the common-law liability of the carrier for safe carriage of property may be limited by a special contract with the shipper, where such contract being supported by a consideration, is reasonable and fairly entered into by the shipper, and does not attempt to cover losses caused by the negligence or misconduct of the carrier.<sup>3</sup>

The invalidity of a shipping contract under the Interstate Commerce Act does not preclude a shipper from recovering for loss or injury to goods by reason of a carrier's negligence, or from injury due to delay in transportation, or for damages caused by carrier wilfully misrouting goods, compelling the shipper to pay the higher rate of freight.<sup>4</sup>

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1. *Philadelphia, W. & B. Rd. Co. v. Lehman*, 56 Md. 233, 40 Amer. Rep. 415.

2. *Baltimore & O. Rd. Co. v. Whitehill*, 104 Md. 310, 64 Atl. 1033; *Philadelphia, W. & B. Rd. Co. v. Diffendal*, 109 Md. 509, 72 Atl. 193; *Baltimore, C. & A. Ry. Co. v. Sperber & Co.*, 117 Md. 602, 84 Atl. 72; *Philadelphia, W. & B. Rd. Co. v. Lehman*, supra.

3. *St. Louis & S. F. Rd. Co. v. Ladd* (Okla. 1918), 178 Pac. 125.

4. *Chicago, R. I. & P. Ry. Co. v. Ranby* (Tex. 1918), 207 S. W. 157, 158.



2015-C. LIABILITY OF INITIAL CARRIER FOR DAMAGES FOR THE LOSS OF THE MARKET CAUSED BY UNREASONABLE DELAY IN TRANSPORTATION.

In *New York, P. & N. Rd. Co. v. Peninsula Produce Exchange of Maryland*,<sup>1</sup> the United States Supreme Court held that damages for the loss of market because of unreasonable delay in transportation occurring anywhere en route are comprehended by the provision of the "Carmack Amendment" of June 29, 1906, Section 7, to the act of February 4, 1887, Section 20, which makes the initial carrier of an interstate shipment liable to the holder of the bill of lading for "any loss, damage, or injury to such property" caused by it or by any carrier in the chain of transportation, despite any agreement or stipulation to the contrary, with the right of recovery over against the carrier at fault in the amount of such "loss, damage, or injury" as the former carrier may have been required to pay to the owners of the property. Mr. Justice Hughes in delivering the opinion of the court, stated: "On May 26, 1910, the Peninsula Produce Exchange of Maryland delivered to the New York, Philadelphia & Norfolk Railroad Company at Marion, Maryland, a carload of strawberries for transportation to New York City. The conditions of the transportation were set forth in the bill of lading issued by the railroad company. The property was delivered at destination some hours later than the customary time of arrival, and this action was brought to recover damages for the failure to transport and deliver with reasonable despatch. Judgment in favor of the shipper was affirmed by the court of appeals of Maryland, 122 Md. 215, 98 Atl. 433.

"The plaintiff in error, in its brief states that "the questions involved are two—"

" '1. Does the Carmack amendment (34 Stat. at L. 593, chap. 3591, Comp. Stat. 1913, sec. 8592) impose on the "initial carrier" liability for delay occurring on the line of its connection without physical damage to property?

" '2. Was the plaintiff entitled to recover because its shipment failed to arrive in time for the market of May 25th, when the regulations under which the shipment moved was published in tariffs duly on file with the Interstate Commerce Commission, and specifically provided: "No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market, or otherwise than with reasonable despatch, unless by specific agreement indorsed hereon?" "

"The first question, arising from the fact that it did not appear that the delay occurred on the line of the initial carrier (the defendant) was raised by an unsuccessful demurrer to the declaration, and both questions were presented by prayers for instructions which are denied.

"The amendment of sec. 20 of the interstate commerce act, known as the Carmack 3591, sec. 7, 34 Stat. at L. 584, 595, Comp. Stat. 1913, sec. 8592) provides 'that any common carrier \* \* \* receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier' \* \* \* to which such property may be delivered or over whose line or lines such

property may pass, and no contract, receipt or rule, or regulation, shall exempt such common carrier \* \* \* from the liability hereby imposed.'

"We need not review at length the considerations which led to the adoption of this amendment. These were stated in *Atlantic Coast Line R. Co. v. Riverside Mills*, 219 U. S. 186, 199-203, 55 L. ed. 167, 179-181, 31 L. R. A. (N. S.) 7, 31 Sup. Ct. Rep. 164. It was there pointed out that along with singleness of rate and continuity of carriage in through shipments there had grown up the practice of requiring specific stipulation limiting the liability of each separate company to its own part of the through route, and, as a result, the shipper could look to the initial carrier for recompense only 'for loss, damage, or delay,' occurring on its own line. The 'burdensome situation' was 'the matter which Congress undertook to regulate.' And it was concluded that the requirement that interstate carriers holding themselves out as receiving packages for destination beyond their own terminal should be compelled 'as a condition of continuing in that traffic to obligate themselves to carry to the point of destination using the lines of connecting carriers as their own agencies' was within the power of Congress. The rule, said the court in defining the purpose of the Carmack amendment, is adapted to secure unity of transportation with unity of responsibility.' And, again, we said in *Adams Exp. Co. v. Croninger*, 226 U. S. 491, 57 L. ed. 314, 44 L. R. A. (N. S.) 257, 33 Sup. Ct. Rep. 148, that this legislation embraces 'the subject of the liability which he must issue.' 'The duty to issue a bill of lading and the liability thereby assumed are covered in full, and though there is no reference to the effect upon state regulation, it is evident that Congress intended to adopt a uniform rule and relieve such contracts from the diverse regulation to which they had been therefore subject.'

"It is now insisted that Congress failed to accomplish this paramount object, that while unity of responsibility was secured if the goods were injured in the course of transportation or were not delivered, the statute did not reach the case of a failure to transport with reasonable despatch. In such case, it is said that, although there is a through shipment, the shipper must still look to the particular carrier whose neglect caused the delay. We do not think that the language of the amendment has the inadequacy attributed to it. The words, 'any loss, damage, or injury to such property' caused by the initial carrier or by any connecting carrier, are comprehensive enough to embrace all damages resulting from any failure to discharge a carrier's duty with respect to any part of the transportation to the agreed destination. It is not necessary nor is it natural, in view of the general purpose of the statute, to take the words, 'to the property' as limiting the word 'damage' as well as the word 'injury' and thus as rendering the former wholly superfluous. It is said that there is a different responsibility on the part of the carrier with respect to delay from that which exists where there is a failure to carry safely. But the difference is with respect to the measure of the carrier's obligation, the duty to transport with reasonable despatch is none the less an integral part of the normal undertaking of the carrier. And we can gather no intent to unify only a portion of the carrier's responsibility. Further, it is urged that the amendment provides that the initial carrier may recover from the connecting carrier 'on whose line the loss, damage, or injury shall have been sustained the amount



of such loss, damage, or injury as it may be required to pay to the owners of such property'; and this, it is said, shows that the 'loss, damage, or injury' described is that which may be localized as having occurred on the line of one of the carriers, and therefore should be limited to physical loss or injury. But we find no difficulty in this, as the damages required to be paid by the initial carrier are manifestly regarded as resulting from some breach of duty, and the purpose is simply to provide for a recovery against the connecting carrier if the latter, as to its part in the transportation, is found to be guilty of that breach. The view we have expressed finds support in the explicit terms of the act of January 20, 1914, chap. 11, 38 Stat. at L. 278, which provides, 'that no suit brought in any state court of competent jurisdiction against railroad company \* \* \* to recover damages for delay, loss of, or injury to property received for transportation by such common carrier under section twenty of the act to regulate commerce \* \* \* shall be removed to any court of the United States where the matter in controversy does not exceed, exclusive of interest and costs, the sum of value of \$3,000.' If the language of sec. 20 can be regarded as ambiguous, this legislative interpretation of it as conferring a right of action for delay, as well as for loss or injury to the property in the course of transportation, is entitled to great weight. 1 *Alexander v. Alexander*, 5 Cranch, 1, 7, 8, 3 L. ed. 19-21; *United States v. Freeman*, 3 How. 556-564, 11 L. ed. 724, 727, 728; *Cope v. Cope*, 137 U. S. 682, 688, 34 L. ed. 832, 834, 11 Sup. Ct. Rep. 222.

"The second question as stated, as sought to be raised under the stipulation of the bill of lading (being one of the conditions filed with the tariffs under the interstate commerce act) that the carrier is not bound to transport 'by any particular train or vessel, or in time for any particular market, or otherwise than with reasonable despatch.' See *Chicago & A. R. Co. v. Kirby*, 225 U. S. 155, 56 L. ed. 1033, 32 Sup. Ct. Rep. 648, Ann. Cas. 1914A 501; *Atchison T. & S. F. R. Co. v. Robinson*, 233 U. S. 173, 58 L. ed. 901, 34 Sup. Ct. Rep. 556. But the argument upon this point is not addressed to the issue, as recovery was not sought or permitted, except for a failure to transport with reasonable despatch. The declaration alleged that the berries 'were to be transported with safety, and with reasonable despatch, and delivered \* \* \* in safe condition and with reasonable diligence,' that the defendant, or its connecting lines, did not 'transport or deliver the same with reasonable despatch'; and that the damage was due to their failure to use 'due and reasonable diligence.' The court instructed the jury that it became the duty of the defendant and all connecting lines 'to use reasonable care, diligence, and exertion in forwarding and transporting and delivering' the berries, and that if the jury should believe that the defendant and the connecting lines or any of them, 'did not use such care, diligence and exertion' and that by reason of the failure so to do the berries arrived 'too late for the market of the day on which they would have arrived if they had been forwarded and transported with such care, diligence and exertion, and that the plaintiff thereby sustained loss, then their verdict should be for the plaintiff.' As the court of appeals of Maryland said, the ground of the action was 'the failure to carry with reasonable despatch, and the loss of marketability is mentioned as the element of damage.' That is, the reference to the market said to have been lost was merely for the purpose of calculating damages, which were sought solely because of

lack of reasonable diligence, and not upon the allegation of any added duty with respect to a particular train or market. The stipulation invoked does not attempt to limit the duty of the carrier to transport with reasonable despatch and we are not called upon to consider its effect in any other aspect."

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1. *New York, P. & N. Rd. Co. v. Peninsula Produce Exchange of Maryland* (1916), 240 U. S. 34, 36 Sup. Ct. Rep. 230, 60 L. Ed. 511, affirming, 122 Md. 215, 89 Atl. 433.

2015-D. AN ACTION FOR NEGLIGENT DELAY OF AN INTERSTATE SHIPMENT GOVERNED BY FEDERAL LAWS.

An action for negligent delay in the transportation of an interstate shipment is governed by the rules of decisions prevailing in the Federal courts.<sup>1</sup>

In *Southern Express Co. v. Byers*,<sup>2</sup> the United States Supreme Court, per Mr. Justice McReynolds, stated: "Manifestly the shipment was interstate commerce and under the settled doctrine established by our former opinions, rights, and liabilities in connection therewith depends upon acts of Congress, the bill of lading and common-law principles accepted and enforced by the Federal courts. In order to determine the validity and effect of restrictions upon liability contained in such bills, it is important, if not indeed essential to consider the applicable schedules on file with the Commission. *Adams Exp. Co. v. Croninger*, 226 U. S. 491, 57 L. ed. 314, 44 L. R. A. (N. S.) 257, 33 Sup. Ct. Rep. 148; *Chicago, B. & Q. R. Co. v. Miller*, 226 U. S. 513, 57 L. ed. 323, 33 Sup. Ct. Rep. 155; *Chicago, St. P. M. & O. R. Co. v. Latta*, 226 U. S. 519, 57 L. ed. 328, 33 Sup. Ct. Rep. 155; *Wells F. & Co. v. Neiman-Marcus Co.*, 227 U. S. 469, 57 L. ed. 600, 33 Sup. Ct. Rep. 267; *Kansas City Southern R. Co. v. Carl*, 227 U. S. 639, 57 L. ed. 683, 33 Sup. Ct. Rep. 391; *Missouri K. & T. R. R. Co. v. Harriman*, 227 U. S. 657, 57 L. ed. 690, 33 Sup. Ct. Rep. 397; *Chicago, R. I. & P. R. Co. v. Cramer*, 232 U. S. 490, 58 L. ed. 697, 34 Sup. Ct. Rep. 383; *Boston & M. R. Co. v. Hooker*, 233 U. S. 97, 58 L. ed. 868, L. R. A. 1915B, 450, Ann. Cas. 1915D, 593; *George M. Pierce Co. v. Wells F. & Co.*, 236 U. S. 278, 59 L. ed. 576, 35 Sup. Ct. Rep. 351; *New York P. & N. R. Co. v. Peninsula Produce Exch.*, 240 U. S. 34, ante 511, 36 Sup. Ct. Rep. 230.

"It was plain error to exclude the rate schedules."

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1. *McMickle v. Wabash Ry. Co.* (Mo. 1919), 209 S. W. 611.  
 2. *Southern Express Co. v. Byers* (1916), 240 U. S. 612, 3 Sup. Ct. Rep. 410, 60 L. Ed. 825, 827.

2015-E. RECOVERY OF PAID FREIGHT CHARGES AS A PART OF THE DAMAGES CAUSED BY THE DELAY IN TRANSPORTING AN INTERSTATE SHIPMENT.

The recovery, as a part of the damages caused by a delay in transporting an interstate shipment of perishable freight, of the freight paid upon delivery at destination, is properly allowed, notwithstanding the prohibitions of the Interstate Commerce Act against deviations from the filed tariffs and schedules, and against rebates and



undue preferences and discriminations—especially where the bills of lading require damages to be computed upon the basis of the value of the property at the place and time of shipment.<sup>1</sup>

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1. *Pennsylvania Rd. Co. v. Olivit Bros.* (1917), 243 U. S. 574, 37 Sup. Ct. Rep. 468, 61 L. Ed. 908; *Pennsylvania Rd. Co. v. Carr* (1917), 243 U. S. 587, 37 Sup. Ct. Rep. 472, 61 L. Ed. 914.

#### 2015-F. INSTRUCTIONS TO JURY IN ACTIONS FOR DAMAGES ACCOUNT DELAY TO INTERSTATE SHIPMENTS.

Error, if any, in the ruling of the trial court in an action against a carrier for damages caused by delay in transporting an interstate shipment of perishable freight, that merely proving an accumulation of freight or a strike did not shift the burden of proof, but that, to complete the defense under strike and accumulation of freight clauses in the bill of lading, the carrier must show that such strike or accumulation of freight caused the delay, is not prejudicial where the jury were otherwise carefully instructed that the carrier had proved a cause beyond its control, i. e., a strike, and that if no negligence on its part was shown it was not liable, and that the burden of proving such negligence was upon the plaintiff, and a like instruction given as to any cause beyond the carrier's control, including an accumulation of freight.<sup>1</sup>

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1. *Pennsylvania Rd. Co. v. Olivit Bros.* (1917), 243 U. S. 574, 37 Sup. Ct. Rep. 468, 61 L. Ed. 908; *Pennsylvania Rd. Co. v. Carr* (1917), 243 U. S. 587, 37 Sup. Ct. Rep. 472, 61 L. Ed. 914.

#### 2015-G. DAMAGES FOR MENTAL SUFFERING ONLY, NOT RECOVERABLE.

In *Southern Express Co. v. Byers*,<sup>1</sup> the United States Supreme Court held that damages for mental suffering only are not recoverable from a carrier on account of its delay in the delivery of an interstate shipment. Mr. Justice McReynolds, in delivering the opinion of the court, stated: "Having been requested in apt time, the trial court refused to charge the jury as follows: 'As the shipment which is alleged to have been delayed was a shipment in interstate commerce, and as the damage claimed by the plaintiff is damage for mental suffering only on account of the delay of the delivery of said shipment, the court instructs the jury that under the evidence in this case the plaintiff is not entitled to recover any such damage; the jury is therefore directed to render a verdict for the defendant.' This instruction should have been given.

"The action is based upon a claim for mental suffering only—nothing else was set up and the proof discloses no other injury for which compensation had not been made. In such circumstances as those presented here, the long-recognized common-law rule permitted no recovery; the decisions to this effect 'rest upon the elementary principle that mere mental pain and anxiety are too vague for legal redress where no injury is done to person, property, health, or reputation.' Cooley, Torts, 3d ed., page 94. The lower Federal courts almost without exception have adhered to this doctrine, and in so doing we think they were clearly right upon principle and also in accord with the great weight of authority. *Chase v. Western U. Teleg. Co.*, 10 L. R. A. 464, 44, Fed. 554; *Crawson v. Western U. Teleg. Co.*, 47

Fed. 544; *Wilcox v. Richmond & D. R. Co.*, 17 L. R. A. 804, 3 C. C. A. 73, 8 U. S. App. 118, 52 Fed. 264; *Tyler v. Western U. Teleg. Co.*, 54 Fed. 634, *Kester v. Western U. Teleg. Co.*, 55 Fed. 603; *Western U. Teleg. Co. v. Wood*, 21 L. R. A. 706, 6 C. C. A. 432, 13 U. S. App. 317, 57 Fed. 471; *Gahan v. Western Union Teleg. Co.*, 59 Fed. 433; *McBride v. Sunset Teleph. Co.*, 96 Fed. 81; *Stansell v. Western U. Teleg. Co.*, 107 Fed. 668; *Western U. Teleg. Co. v. Sklar*, 61 C. C. A. 281, 126 Fed. 295; *Alexander v. Western U. Teleg. Co.*, 126 Fed. 445; *Rowan v. Western Union Teleg. Co.*, 149 Fed. 550; *Western U. Teleg. Co. v. Burris*, 102 C. C. A. 386, 179 Fed. 92; *Kyle v. Chicago, R. I. & P. R. Co.*, 105 C. C. A. 151, 182 Fed. 613. But see *Beasley v. Western U. Teleg. Co.*, 39 Fed. 181.

"In *So. Relle v. Western U. Teleg. Co.*, 55 Tex. 308, 40 A. Rep. 805, the supreme court of Texas held the addressee of a message might recover damages of a telegraph company because of mere mental suffering. Subsequently the courts of Alabama, Iowa, Kentucky, Nevada, Carolina and Tennessee approved and enforced a like rule; those of Dakota, Florida, Georgia, Illinois, Indiana, Kansas, Minnesota, Mississippi, New York, Ohio, Oklahoma, Virginia and West Virginia definitely rejected the innovation. Many of the pertinent cases are reviewed in *Western U. Teleg. Co. v. Chouteau* (1911), 28 Okla. 664, 115 Pac. 879, Ann. Cas. 1912 D 824, 3 N. C. C. A. 879, 49 L. R. A. (N. S.) 206, and note; the general subject is discussed and the authorities cited in Sutherland on Damages, 3d ed., §§ 975, *et seq.* Sedgwick on Damages, 9th ed., §§ 43, *et seq.*, and Sherman & Redfield on Negligence, 6th ed., §§ 756, *et seq.*

"The judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion."

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1. *Southern Express Co. v. Byers* (1916), 240 U. S. 612, 36 Sup. Ct. Rep. 410, 60 L. Ed. 825, 827, *et seq.*

## 2015-H. CONSTRUCTION OF STATE STATUTES MODELED ON THE INTERSTATE COMMERCE ACT.

Where a State statute has been modeled upon the Interstate Commerce Act, decisions of the Supreme Court of the United States, construing that statute, will have persuasive authority.<sup>1</sup>

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1. *Southern P. Co. v. Superior Court* (California 1915), 150 Pac. 397.

## 2016. Validity of limited-liability provisions in receipts, bills of lading, and contracts of shipment in interstate and foreign commerce.

### 2016-A. RECEIVING CARRIER REQUIRED TO ISSUE A RECEIPT OR BILL OF LADING, COVERING A SHIPMENT IN INTERSTATE OR FOREIGN COMMERCE.

Section 20 (11) of the Interstate Commerce Act (*as amended June 29, 1906, and March 4, 1915*), provides as follows:

That any common carrier, railroad, or transportation company subject to the provisions of this Act receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign



country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading.  
\* \* \*

For forms of domestic and export bills of lading prescribed by the Interstate Commerce Commission, see "*Forms of bills of lading prescribed by the Interstate Commerce Commission for use in interstate and foreign commerce*," Section 2016-W, *post*.

#### 2016-B. NATURE AND FUNCTIONS OF THE BILL OF LADING.

An important function of the bill of lading is to give formal expression to the stipulations and conditions under which the carrier seeks to obtain a modification or limitation of the liability that otherwise would be imposed upon it under the common law. While the limitations of the carrier's liability must be agreed to by the shipper and the agreement be invested with the sanctity of a valid contract, neither by common law nor by federal statute in this country is any particular form of contract or solemnity of execution required. Contracts between shipper and carrier, however, are almost invariably evidenced by the more or less formal bill of lading, written or printed, which serves three distinct functions: First, a receipt for the goods; second, a contract for their carriage; and, third, documentary evidence of title to the goods. As a receipt for the goods, it recites the place and date of shipment; describes the goods, their quantity, weight, dimensions, identification marks, condition, etc., and sometimes their quality and value. As a contract, the bill names the contracting parties, specifies the rate or charge for transportation, and sets forth the agreement and stipulations with respect to the limitations of the carrier's common-law liability in the case of loss or injury to the goods and other obligations assumed by the parties or to matters agreed upon between them. That part of the bill which constitutes a receipt may be treated as distinct from the part incorporating the contractual terms. Porter, *Law of Bills of Lading*, § 14, citing *Myer v. Peck*, 1 Tiffany (28 N. Y.), 590; *Higgins v. U. S. M. S. Co.*, 3 Blatchf. (U. S. S. C.), 282. Ordinarily parol evidence will not be admitted to carry the terms or legal effect of a bill of lading, considered as a contract between the parties to it, although, it seems, that as a receipt for the goods it may be contradicted by oral testimony. *The Delaware*, 14 Wall., 579. It is sufficient if the shipper accepts the carrier's bill of lading without himself signing it. It becomes binding upon him by his acceptance, he being presumed to know and accept the conditions of the written bill of lading. The bill of lading is regarded as representative of the goods while they are in the carrier's possession. It is not a negotiable instrument in the common acceptance of the term, but it may be, and frequently is, made negotiable in form and thus becomes invested with peculiar attributes of great practical importance commercially.<sup>1</sup>

On the question of the negotiability and transferability of bills of lading, see "*Bills of Lading and Contracts of of Shipment*," Chapter 8, *ante*.

1. In the Matter of Bills of Lading (1919), 52 I. C. C. Rep. 671, 681.

## 2016-C. BILL OF LADING GOVERNS THE THROUGH TRANSPORTATION.

In *Wabash Ry. Co. v. Holt*<sup>1</sup> the United States Circuit Court of Appeals held that Section 20 of the Interstate Commerce Act, as changed by the "Carmack" and "Cummins Amendments," making the initial carrier of property liable to the lawful holder of the bill of lading for the full actual loss, damage, or injury to the property caused by it, or by any connecting carrier under a through bill of lading, also governs the liability of such connecting carriers, and that a provision of the bill of lading limiting the liability to the invoice value, which by the statute is made void as to the initial carrier, is also void as to the connecting carriers thereunder. Mr. Circuit Judge Hough, in rendering the decision of the court, stated: "This case depends on the construction of section 20 of the 'Act to Regulate Commerce,' as changed by the so-called Carmack and Cummins Amendments. The statute as it stands respecting this litigation is section 8604a, U. S. Comp. Stat. 1916.

"The bill of lading in evidence, issued by the initial carrier, declares that:

"The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the \* \* \* bona fide invoice price \* \* \* to the consignee,' viz., in this instance, \$467.98."

"This bill having been issued by the New York Central, it is admitted that under the Carmack Amendment that railroad might have been successfully sued for the damage done by its connecting carrier, the Wabash; and further it is admitted that, if so sued, it would have been liable under the Cummins Amendment for the market value of the goods lost, anything in the bill of lading to the contrary notwithstanding.

"But it said that section 20 as amended puts this last new burden upon the initial carrier only, in that it specifically requires "such carrier" (i. e. the one first receiving the goods) to answer for the miscarriage of a connecting railroad to an amount theretofore usually excluded by stipulation, such as the one above quoted.

"Nowhere in the amended section are the burdens of the initial carrier expressly extended to or imposed upon connecting carriers, except as the company "issuing such \* \* \* bill of lading" is given the right to recover over from the connecting road inflicting the injury, any amount 'it (the initial carrier) may be required to pay' to the holder of the bill of lading.

"The result of plaintiff in error's contention is that, in suits against other than the receiving carrier for lost or injured freight, the Cummins Amendment has no effect at all; and the freight owner must perhaps cross the continent to get a full recovery, although the carrier actually inflicting the injury at his door.

"It is not deniable, that a good verbal argument can be and has been made in support of this result. The amended statute is something of a patchwork, and the plain intention of Congress not well expressed in detail. Yet we feel assured that the entire section has been so read by the Supreme Court as to relieve us of much labor.

"The contract for carriage over the lines of connecting carriers, however numerous, is evidenced by one bill of lading, issued as in this case by the receiving carrier. That bill, 'governs the entire transpor-



tation and fixes obligations of all participating carriers to the extent that the terms of the bill of lading are applicable and valid' (*Georgia, etc. Co. v. Blish etc. Co.*, 241 U. S. at page 195, 36 Sup. Ct. at page 543, 60 L. ed. 948) and each participating carrier is liable according to the 'Applicable valid terms of the original bill' (*Missouri etc. Co. v. Ward*, 244 U. S. at page 387, 37 Sup. Ct. at page 619, 61 L. Ed. 1213).

"The test of validity is to ascertain what the statute permitted the initial carrier to do in respect of making the bill of lading contract. The carrier cannot by such a clause as was first above quoted, limit its own liability. Therefore such clause was invalid in toto; it never existed in legal effect.

"Thus, and thus only, can uniformity of bill of lading operation over a long line of carriers be secured, and we think this method has been insisted on in the ruling cases cited. Every bill, the moment it is signed, stands purged of all matters forbidden by the statute, including language obnoxious to the Cummins Amendment. If such clause does not in legal effect exist when the bill is signed, it does not exist at all, and the bill is to be read without it."

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1. *Wabash Ry. Co. v. Holt* (1920), 263 Fed. Rep. 72, 73.

#### 2016-D. PROVISIONS OF THE BILL OF LADING ARE AVAILABLE TO ALL CARRIERS IN THE THROUGH ROUTE.

A bill of lading for shipment of goods from Kansas City to New Haven, Conn., containing provision requiring notice in writing of loss or damage, is an "interstate shipping contract" made under and pursuant to the "Carmack Amendment," and must be construed and enforced in the light of that Act and in view of the broad governmental policies it was designed to set up and enforce, and must be construed similarly as to originating, intermediate, or terminal carrier.<sup>1</sup>

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1. *Cudahy Packing Co. v. Bixby* (Mo. 1918), 205 N. W. 365.

#### 2016-E. FAILURE OF INITIAL CARRIER TO ISSUE A RECEIPT OR BILL OF LADING FOR GOODS SHIPPED IN INTERSTATE COMMERCE DOES NOT EXEMPT IT FROM THE LIABILITY IMPOSED BY SECTION 20 OF THE ACT.

An initial carrier cannot escape the liability imposed upon it by the "Carmack Amendment" for loss of goods on the line of a connecting carrier by reason of the fact that it fails to issue a receipt or bill of lading therefor.<sup>1</sup>

Where a railroad carrier receives an interstate shipment without issuing any bill of lading or making a contract with the shipper, its liability is governed by the terms of a uniform bill of lading published and filed with the Interstate Commerce Commission.<sup>2</sup>

The act of Congress, amending Section 20 of the Interstate Commerce Act, approved June 29, 1906, and appearing in 34 United States Statutes, c. 3591, Sec. 7, was enacted chiefly for the purpose of imposing upon the initial carrier responsibility for the entire carriage of an interstate shipment, and while it required the issuance of a bill of lading in evidence of such contract and responsibility, there is nothing inhibitive in its terms or purpose. The requirement for a bill of lading

is imposed primarily for the benefit of the shipper, and, it does not, and was not intended to, relieve the carrier from liability who may have entered into a contract of shipment without it. A position not dissimilar has been approved and applied in several cases against insurance companies where a policy issued in violation of some requirement, established for the protection of the policy holder only, was held a binding obligation on the company and recovery thereon was sustained.<sup>3</sup>

A carrier is liable for goods which it has received even though no bill of lading has been issued. Goods having been accepted by a carrier for shipment, it is liable for burning thereof before shipment, notwithstanding the bill of lading had not been issued, and noncompliance with any requirement of Interstate Commerce Commission for tagging goods.<sup>4</sup>

Where the contract for an interstate shipment of cattle was oral, but just before the train started the shipper was required to sign a written bill of lading which he did not have time to read and could not have understood, the oral contract was not supplanted; the contract contained in the bill of lading not being mutual.<sup>5</sup>

The terms and conditions contained in the forms of bills of lading prescribed by the Interstate Commerce Commission in the exercise of its lawful power under the Interstate Commerce Act, are read into every contract of shipment in interstate and foreign commerce by operation of law. Therefore, except in those cases where property is transported under a special contract in consideration of a lower rate based upon released valuation, the terms and conditions of the bills of lading prescribed by the Interstate Commerce Commission govern any contract of shipment in interstate and foreign commerce, regardless of the form of the contract, receipt or bill of lading used by the carrier, and regardless of whether any written contract is issued at all. The Federal Government, being supreme in this field, its action in prescribing a Uniform Bill of Lading supersedes all State action on this subject and all private contract in contravention thereof.

See "*Forms of bills of lading prescribed by the Interstate Commerce Commission for use in interstate and foreign commerce*," Section 2016-W, *post*.

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1. *International Watch Co. v. Delaware L. & W. Rd. Co.* (1911), 80 N. J. L. 553, 78 Atl. 49.
  2. *Lazarus v. New York C. Rd. Co.* (1921), 271 Fed. Rep. 93.
  3. *Davis v. Norfolk & S. Rd. Co.* (N. C. 1916), 90 S. E. 123, 124.
  4. *Galveston, H. & S. A. Ry. Co. v. Compania Hulera De Monclava* (Tex. 1918), 204 S. W. 236.
  5. *Pan Handle & S. F. Ry. Co. v. Jones* (Tex. 1916), 182 S. W. 1.

2016-F. PROVISIONS OF THE CARRIER'S BILL OF LADING IN FORCE AT THE TIME OF SHIPMENT GOVERN IN ABSENCE OF THE ISSUANCE OF SAME TO THE SHIPPER.

Under the Interstate Commerce Act as amended, and the regulations of the Interstate Commerce Commission respecting tariffs and uniform bills of lading, when the delivery to the carrier is complete though no bill of lading was issued, the rights and liabilities of the parties are regulated by the uniform bill of lading so far as applicable.<sup>1</sup>

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1. *Standard Combed Thread Co. v. Pennsylvania Rd. Co.* (N. J. 1915), 95 Atl. 1002.



2016-G. BILL OF LADING PROVISION REQUIRING SURRENDER OF THAT DOCUMENT BEFORE DELIVERY OF THE SHIPMENT.

Under the "Carmack Amendment," a stipulation in the bill of lading covering an interstate shipment, requiring its surrender before delivery, is not for the sole benefit of the carrier, who acts at its peril in delivering the property without surrender of the bill of lading.<sup>1</sup>

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1. *Babbitt v. Grand Trunk W. Ry. Co.* (Ill. 1918), 120 N. E. 803.

2016-H. PROVISIONS RELATING TO RECEIPT AND DELIVERY OF PROPERTY FROM AND TO PRIVATE AND OTHER SIDINGS.

It has been held that the provision in the bill of lading that property received from or delivered on private or other siding, wharves or landings, shall be at the owner's risk until the cars are attached or after they are detached from trains, is reasonable and valid.<sup>1</sup>

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1. *Bianchi v. Montpelier & W. R. Rd. Co.* (Vt. 1918), 104 Atl. 144.

2016-I. INTERSTATE COMMERCE ACT IMPOSES UNIFORMITY OF OPERATION IN CONTRACTS FOR INTERSTATE TRANSPORTATION.

The object of Congress in passing the Interstate Commerce Act was to impose uniformity of liability on all of the common carriers who might form a link in the chain necessary to transport the shipment from point of origin to destination, and thus to protect this branch of interstate commerce from diversity of liability to the owner of property transported which had theretofore existed by reason of the diversity of legislation and judicial holdings of the several States. But this object would be as completely defeated if each carrier over whose line the property was transported could make a different contract, changing its liability, as it would if each state could pass statutes effecting the same end. Under the provisions of the "Carmack Amendment" the initial carrier is liable to a shipper for the damage he has suffered, and the Act provides that when the initial carrier is required to pay such loss, the railroad on whose line the loss was sustained should repay it, as evidenced by any receipt, judgment, or transcript thereof. This would indicate a clear intent on the part of Congress that the liability should be uniform, which uniformity would be destroyed if each line or railroad over which the property was transported could make an independent contract, varying its liability to the shippers. It cannot have been the intention of Congress to allow an intermediate carrier to contract for a lesser degree of liability to the shipper than the Act had imposed on it in favor of the initial carrier. Another objection to this provision is that if by contract a railroad can divest itself of its character of a common carrier of freight, what is to prevent it from doing the same thing as a common carrier of passengers? The public has granted to the railroads of the country their franchises, including the right of eminent domain, and as a condition of the grant has required the railroad to assume the responsibility and liabilities of common carriers, and, they cannot, by contract with an individual, divest themselves of these liabilities and become only private forwarders. This is not in conflict with the many decisions, State and Federal, on this subject, for none of these cases decide that a rail-

road can, by contract, divest itself of its character of common carrier; nor do any of them hold that in interstate commerce any of the connecting lines can vary its liability by contract; and make it different from that of the initial carrier.<sup>1</sup>

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1. *Missouri, O. & G. Co v. French* (Okla. 1915), 152 Pac. 591.

2016-J. CONTRACTS FOR INTERSTATE TRANSPORTATION TO BE STRICTLY CONSTRUED WITH REFERENCE TO THE INTERSTATE COMMERCE ACT.

The validity of a contract for interstate transportation is to be determined solely with reference to the Interstate Commerce Act.<sup>1</sup>

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1. *St. Louis & S. F. Rd. Co. v. Wynn* (Okla. 1915), 153 Pac. 1156, 1157.

2016-K. LIMITED-LIABILITY PROVISIONS OF CONTRACTS OF SHIPMENTS IN INTERSTATE AND FOREIGN COMMERCE IN VIOLATION OF SECTION 20 OF THE ACT, UNLAWFUL AND VOID.

Section 20 (11) of the Interstate Commerce Act (*as amended June 29, 1906, and March 4, 1915*), provides as follows:

\* \* \* and any such common carrier, railroad, or transportation company, so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the *full actual loss, damage, or injury* to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, *notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission*; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void.

Provisions in a bill of lading limiting liability will not hereafter be of interest because the "Cummins Amendment" of March 4, 1915, invalidates all attempted agreements of this character between the shippers and the carriers.<sup>1</sup>

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1. *Norfolk & W. Ry. Co. v. Steele & Son* (Va. 1915), 86 S. E. 124, 127.

2016-L. PROHIBITIONS OF SECTION 20 OF THE ACT GOVERNING LIMITED-LIABILITY CLAUSES IN BILLS OF LADING, NOT APPLICABLE TO INTRASTATE TRAFFIC.

It is clear that a bill of lading or contract of shipment containing clauses limiting the carrier's liability in contravention of the provisions of Section 20 of the Interstate Commerce Act is valid as to all intrastate traffic in the absence of State legislation and judicial laws to the contrary.

2016-M. THE INCLUSION IN A SHIPPING CONTRACT OF AN EXEMPTION-OF-LIABILITY CLAUSE, VOID UNDER SECTION 20 OF THE ACT, DOES NOT VITIATE THE ENTIRE CONTRACT.

The fact that a bill of lading contains an exemption of liability clause under the "Carmack Amendment" making the initial carrier liable for loss occurring on the lines of connecting carriers and for-



bidding exemption from such liability, does not vitiate the entire contract of shipment so as to preclude the holder from recovery for a failure to safely transport goods.<sup>1</sup>

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1. *Central of Ga. Ry. Co. v. Sims* (1910), 169 Ala. 295, 53 So. 826.

2016-N. PREPAID RATE DOES NOT CONTROL A VALID LIABILITY PROVISION IN THE CONTRACT.

When the shipper makes an express representation of value for the purpose of enabling the carrier to fix the rate, and a rate is fixed by the carrier which by mistake is based on the theory that a much lower valuation was fixed than that in fact contained in the written statement of value signed by the shipper, the rights of the shipper cannot be affected within the limits established by his declaration of value by the rate which the carrier exacts. The contention of the defendant is in substance that, even though a shipper has declared a high value for the purpose of enabling the carrier to fix a rate, he is nevertheless bound to a much lower limitation of value simply because of the rate actually prepaid; that it is the rate charged and not the value declared which fixes the carrier's liability. That argument is an inversion of sound reason. The declaration of value fixes both the legal rate and the amount recoverable; the rate actually charged does not control a written declaration of value. It was said in *Kansas City Southern Ry. Co. v. Carl*, 227 U. S. 639, at page 652, 33 Sup. Ct. 391, at page 395, (57 L. ed. 683), by Mr. Justice Lurton: "The valuation the shipper declares determines the legal rate where there are two rates based upon valuation. He must take notice of the rate applicable, and actual want of knowledge is no excuse \* \* \* When there are two published rates, based upon difference in value, the legal rate automatically attached itself to the declared or agreed value. Neither the intentional nor accidental misstatement of the applicable published rate will bind the carrier or shipper. The lawful rate is that which the carrier must exact and that which the shipper must pay." *Adams Express Co. v. Croninger*, 226 U. S. 491, 33 Sup. Ct. 148, 57 L. ed. 314, 44 L. R. A. (N. S.) 257; *Geo. N. Pierce Co. v. Wells Fargo & Co.*, 236 U. S. 278, 283, 35 Sup. Ct. 351, 59 L. ed. 576. These words of Mr. Justice Lurton were used in deciding a case where a shipper was endeavoring to escape the effect of his statement of a low valuation. But they are equally applicable to a carrier which is trying to evade the effect of a contractual assertion of high value by the shipper. Doubtless all parties are bound by the schedules of rates fixed according to law and cannot vary or affect them by oral or written contracts. *Atchison, Topeka & Santa Fe Ry. v. Robinson*, 233 U. S. 173, 34 Sup. Ct. 556, 58 L. ed. 901. But that does not mean that, when a shipper declares one value of his goods, on which the higher of two rates ought to be charged, that declaration can be made naught because the carrier charges him the lower rate, especially when, as already has been pointed out, the carrier can collect the higher rate by subsequent action at law, notwithstanding the initial collection of the lower rate. The rule established in *Cincinnati, N. O. & T. P. Ry. Co. v. Rankin*, 241 U. S. 319, 327, 36 Sup. Ct. 555, 558, (60 L. ed. 1022), to the effect that "the essential choice of rates (by the shipper) must be made to appear before a carrier can successfully claim the benefit of such a limitation and relief from liability," is applicable to the case at bar. Cer-

tainly there is disclosed on this record nothing to indicate a voluntary, intentional or intelligent choice by the shipper of the lower and limited-liability rate. The clause in the bill of lading limiting liability to the lower value because "determined by the classification or tariffs upon which the rate is based" is not applicable to a case where a value actually is represented in writing by the shipper and the rate lower than that permitted or required by the stated value is nevertheless charged by the carrier without collusion or actual knowledge of the classification or rate by the shipper so far as it appears. There is hardly a contractual meeting of minds under such circumstances. There is no provision in the Acts of Congress or binding decision which compels a state court to hold that a limitation of a shipper's right to recovery to an amount below the true value of his goods is imposed on him. It seems inequitable to permit the carrier by charging the lower rate to prevent the shipper from relying upon his express declaration of value simply by referring to a published schedule where two alternative rates are stated, the higher one of which ought to have been charged if reliance had been placed on the declared statement of value made by the shipper. Such an interpretation of the law in effect would permit the railroad to elect after the event the course most to its interests, by collecting the balance of the higher rate in case of a safe delivery, and by limiting its liability to the lower value fixed by the rate actually exacted in case of loss.<sup>1</sup>

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1. *Aradalou v. New York, N. H. & H. Rd. Co.* (Mass. 1916), 114 N. E. 297, 300.

#### 2016-O. EFFECT OF MAXIMUM AMOUNT OF RECOVERY STIPULATED IN CONTRACT OF SHIPMENT.

Where a bill of lading for an interstate shipment declared that the recovery for horses and mules should be limited to \$100.00 per head, the true value of the animals at the point of shipment should be ascertained to determine the damage; the provision merely limiting liability to the amount stated.<sup>1</sup>

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1. *Washington Horse Exchange v. Louisville & N. Rd. Co.* (N. C. 1916), 87 S. E. 941.

#### 2016-P. BILLS OF LADING COVERING EXPORT TRAFFIC TO CONTAIN SEPARATE STATEMENT OF CHARGES FOR RAIL AND WATER TRANSPORTATION.

See "*Bill of lading covering export traffic to contain separate statement of charges for rail and water transportation*," Section 2990-B, *ante*.

#### 2016-Q. APPLICATION OF LIMITED-LIABILITY PROVISIONS OF A BILL OF LADING IN A CASE NOT GOVERNED BY SECTION 20 OF THE ACT.

It has been generally held in cases where a construction of the "Cummins Amendment" was not involved that the provision in the uniform bill of lading, limiting the measure of damages to the value of shipment at the time and place of shipment was valid.<sup>1</sup>

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1. *Keeney v. Chicago, B. & Q. Rd. Co.* (Ia. 1918), 167 N. W. 405.



2016-R. INVALIDITY OF SPECIAL AGREEMENT IN CONTRAVENTION OF THE PUBLISHED TARIFF REGULATIONS LIMITING THE CARRIER'S LIABILITY TO THAT OF A WAREHOUSEMAN DURING FREE-TIME PERIOD FOR DELIVERY.

In *Southern Ry. Co. v. Prescott*<sup>1</sup> the United States Supreme Court, per Mr. Justice Hughes, stated: "This action was brought to recover for the loss of nine boxes of shoes which were destroyed by fire, on July 4, 1913, while in the possession of the Southern Railway Company, plaintiff in error. These boxes were part of a lot of thirteen boxes which had been shipped on June 21, 1913, at Petersburg, Virginia, by the Seaboard Air Line Railway and connections, consigned to W. E. Prescott, defendant in error, at Edgefield, South Carolina, and had arrived at Edgefield over the line of the Southern Railway Company on June 23, 1913. The plaintiff alleged three causes of action against the latter company: (1) as common-carrier, (2) as warehouseman, and (3) for penalty because of failure to adjust and pay the claim, after notice, as provided by law. The answer of the railway company, with a general denial, set up that the shipment was interstate and governed by the act to regulate commerce. At the close of the plaintiff's case, the railway company moved for a nonsuit and decision was reserved. The railway company then put in evidence the tariff rules, filed with the Interstate Commerce Commission, which governed the shipment. These provided that the reduced rates specified would 'apply on property shipped subject to condition of carrier's bill of lading,' and that otherwise there would be an increased charge, as stated. One of the stipulations of the bill of lading was that 'property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival' might be kept in car, depot, or warehouse, 'subject to reasonable charge for storage and to carrier's responsibility as warehouseman only.' The freight bill contained the provision: 'Demurrage and storage will be assessed at the expiration of the free time provided by the rules of this company.'

"The agent for the railway company (confirming what had been said by the plaintiff's witness) testified that after notice of the arrival of the goods, the consignee had paid the entire freight charges, that he (the company's agent) 'had accepted the freight' and had the consignee's receipt for the goods.' Four boxes were then taken away, and the rest were permitted to remain to meet the consignee's convenience in removal. The agent further testified: 'Q. What was the agreement with reference to holding those goods? A. He just wanted to know if it would be agreeable to leave them there, and I said it would be. Q. You did not make any charge for storing them? A. No, sir. Q. And did not expect him to pay any? A. No, sir.' The consignee's representative had testified that, while nothing had been said on the point, he expected to pay storage.

"At the close of the testimony, the plaintiff withdrew his cause of action against the defendant as common carrier and for the penalty, and the case went to the jury solely with respect to the liability of the defendant as warehouseman. The railway company moved for a direction of a verdict upon the ground that, under the Federal act, and the tariff regulations, the bill of lading defined the rights of the parties. The motion was denied. The trial court submitted to the

jury the question of liability for the care of the goods as one arising under the state law, which cast upon the defendant the burden of showing that it was not negligent. The position of the railway company, as shown by its requests for instructions which were denied, was that the shipment had not lost its interstate character; that the provisions of the bill of lading were controlling; that the defendant's liability as warehouseman was governed by Federal law; and that the burden was upon the plaintiff to show negligence as a basis for recovery.

"Judgment upon a verdict in favor of the plaintiff was affirmed by the supreme court of the state. 99 S. C. 422, 83 S. E. 781. With respect to the Federal question, the court said: 'The defendant claims that, inasmuch as this is an interstate shipment, the Federal statute governs. This question does not legitimately arise in this case for the reason that the appellant moved for a nonsuit on the ground that 'the evidence here shows that this freight arrived here on the 23d of June and that the freight was paid and receipted for by the agent of Dr. Prescott. He came for it and paid the freight, and I submit that where a common carrier delivered freight in good order, and has it in its depot and paid for, then its liability as a common carrier ceases.' The court reserved its decision on that question and before it was announced, the plaintiff withdrew the cause of action against defendant as common carrier and also the cause of action for the penalty. It therefore being conceded in the circuit court that the contract of carriage was ended, and the appellant held the goods by a separate contract, the question as to appellant's liability as common carrier and the Federal statute under which it might have arisen is not before this court, and the only question argued which we can consider is the question as to warehouseman.' The court then applied the rule of liability as defined by the state law. *Id.* p. 424. And this writ of error has been prosecuted.

"As the shipment was interstate, and the bill of lading was issued pursuant to the Federal act, the question whether the contract thus set forth had been discharged was necessarily a Federal question. The reference, above quoted, to the concession in the trial court, cannot be taken to mean that this Federal question was not raised, for, as we have seen, it was distinctly presented and pressed; but we assume that this ruling, in substance, was that there was no dispute as to the fact that the goods had arrived, that the consignee had paid the freight and signed a receipt for the goods, and that the nine boxes had remained in possession of the carrier under the permission given, as testified, by the carrier's agent. The question is whether this admitted transaction had the legal effect of discharging the contract governed by Federal law, and of creating a new obligation governed by state law.

"By the act to regulate commerce the 'transportation' it regulates is defined as including 'all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported.' (34 Stat. at L. 584, chap. 3591, Comp. Stat. 1913, Sec. 8563.) It is made the duty of the carrier 'to provide . . . such transportation upon reasonable request therefor.' All charges made for 'any service' rendered in such transportation must be 'just and reasonable.' Section 6 requires that the carrier's schedules, printed as provided, 'shall contain the classification of freight in force, and shall also state separately all



terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of services rendered to the passenger, shipper or consignee.' And it is further provided, in the same section, that no carrier shall 'extend to any shipper or person any privileges or facilities in the transportation'—that is, as defined—'except such as are specified in such tariffs.' The bill of lading in accordance with the published regulations provided that 'every service' to be performed under it, including the service of the connecting or terminal carrier, should be subject to the conditions specified, and among these was the express condition governing the company's responsibility as warehouseman for property not removed within forty-eight hours after notice of arrival. Such a retention of the goods was undoubtedly a terminal service forming a part of the 'transportation' in the sense of the Federal act and governed by that act. Thus, in the case of *Cleveland, C. C. & St. L. R. Co. v. Dettlebach*, 239 U. S. 588, ante, 453, 36 Sup. Ct. Rep. 177, it was held with respect to goods lost through the negligence of the terminal carrier while in possession as warehouseman under this stipulation, that the provision of the bill of lading limiting liability to the declared value of the goods was applicable. The court deemed it to be evident 'that Congress recognized that the duty of carriers to the public included the performance of a variety of services that, according to the theory of the common law, were separable from the carrier's service as carrier, and, in order to prevent overcharges and discriminations from being made under the pretext of performing such additional services, it enacted that so far as interstate carriers by rail were concerned, the entire body of such services should be included together under the single term 'transportation' and subjected to the provisions of the act respecting reasonable rates and the like.' It is also clear that, with respect to the service governed by the Federal statute, the parties were not at liberty to alter the terms of the service as fixed by the filed regulations. This has repeatedly been held with respect to rates (*Texas & P. R. Co. v. Mugg*, 202 U. S. 242, 50 L. ed. 1011, 26 Sup. Ct. Rep. 628; *Kansas City Southern R. Co. v. Carl*, 227 U. S. 639, 652, 57 L. ed. 683, 688, 33 Sup. Ct. Rep. 391; *Boston & M. R. Co. v. Hooker*, 233 U. S. 97, 112, 58 L. ed. 868, 876, L. R. A. 1915B, 450, 34 Sup. Ct. Rep. 526, Ann. Cas. 1915D, 593; *Louisville & N. R. Co. v. Maxwell*, 237 U. S. 94, 59 L. ed. 353, L. R. A. 1915E, 665, P. U. R. 1915C, 300, 35 Sup. Ct. Rep. 494), and the established principle applies equally to any stipulation attempting to alter the provisions as fixed by the published rules relating to any of the services within the purview of the act. *Chicago & A. R. Co. v. Kirby*, 225 U. S. 155, 166, 56 L. ed. 1033, 1038, 32 Sup. Ct. Rep. 648, Ann. Cas. 1914A, 501; *Atchison, T. & S. F. R. Co. v. Robinson*, 233 U. S. 173, 181, 58 L. ed. 901, 905, 34 Sup. Ct. Rep. 556. This is the plain purpose of the statute in order to shut the door to all contrivances in violation of its provisions against preferences and discriminations. No carrier may extend 'any privileges or facilities,' save as these have been duly specified. And as the terminal services incident to an interstate shipment are within the Federal act, and the conditions of liability while the goods are retained after notice of arrival are stipulated in the bill of lading under the filed regulations, the conditions thus fixed are

controlling, and the parties cannot substitute therefor a special agreement.

“In determining, in this view, whether the contract had been discharged and the case removed from the operation of the Federal act, regard must, of course, be had to the substance of the transaction. The question is not one of form, but of actuality. *Texas & N. O. R. Co. v. Sabine Tram. Co.*, 227 U. S. 111, 126, 57 L. ed. 442, 448, 33 Sup. Ct. Rep. 229; *Railroad Commission v. Texas & P. R. Co.*, 229 U. S. 336, 341, 57 L. ed. 1215, 1218, 33 Sup. Ct. Rep. 837; *Illinois C. R. Co. v. De Fuentes*, 236 U. S. 157, 163, 59 L. ed. 517, 519, P. U. R. 1915A, 840, 35 Sup. Ct. Rep. 275; *Pennsylvania R. Co. v. Clark Bros. Coal Min. Co.*, 238 U. S. 456, 458, 59 L. ed. 1406, 1408, 35 Sup. Ct. Rep. 896. It is apparent that there had been no actual delivery of the nine boxes. The payment of the freight had no greater efficacy than if it had been made in advance of the transportation. The giving of a receipt for the goods by the consignee did not alter the fact that they were still held by the railway company, awaiting actual delivery. The transaction at most could not be deemed to accomplish more than if the parties had agreed that, until such delivery, the goods should be held under a special contract, in lieu of the prescribed conditions, and this they could not effect without violating the act which governed the shipment. It could not be said, for example, that while under the filed regulations the railway company was to make a ‘reasonable charge for storage’ pending delivery, that it could agree with a particular shipper, or consignee, to hold gratuitously; nor could it alter the terms of its responsibility while the goods remained undelivered. The actual service in holding the goods continued, and we must look to the bill of lading to determine the legal obligation attaching to that service.

“Viewing the contract set forth in the bill of lading as still in force, the measure of liability under it must also be regarded as a Federal question. As it has often been said, the statutory provisions manifest the intent of Congress that the obligation of the carrier with respect to the services within the purview of the statute shall be governed by uniform rule in the place of the diverse requirements of state legislation and decisions. *Adams Exp. Co. v. Croninger*, 226 U. S. 491, 506, 509, 510, 57 L. ed. 314, 320-322, 44 L. R. A. (N. S.) 257, 33 Sup. Ct. Rep. 148; *Missouri, K. & T. R. Co. v. Harriman*, 227 U. S. 657, 57 L. ed. 690, 695, 33 Sup. Ct. Rep. 397; *Boston & M. R. Co. v. Hooker*, 233 U. S. 97, 112, 58 L. ed. 868, 876, L. R. A. 1915B, 450, Ann. Cas. 1915D, 593; *Missouri, K. & T. R. Co. v. Harris*, 234 U. S. 412, 420, 58 L. ed. 1377, 1382, L. R. A. 1915E, 942, 34 Sup. Ct. Rep. 790; *Charleston & W. C. R. Co. v. Varnville Furniture Co.*, 237 U. S. 597, 603, 59 L. ed. 1137, 1139, 35 Sup. Ct. Rep. 715; *Cleveland, C. C. & St. L. R. Co. v. Dettlebach*, *supra*; *New York P. & N. R. Co. v. Peninsula Produce Exch.*, 240 U. S. 34, ante, 511, 36 Sup. Ct. Rep. 230. And the question as to the responsibility under the bill of lading is none the less a Federal one because it must be resolved by the application of general principles of the common law. *Adams Exp. Co. v. Croninger* and *Missouri, K. & T. R. Co. v. Harriman*, *supra*. It was explicitly provided that in case the property was not removed within the specified time, it should be kept, subject to liability ‘as warehouseman only.’ The railway company was therefore liable only in case of negligence. The plaintiff, asserting neglect, had the burden of establishing it. This burden did not shift. As it is the duty of the warehouseman to deliver



upon proper demand, his failure to do so, without excuse, has been regarded as making a prima facie case of negligence. If, however, it appears that the loss is due to fire, that fact in itself, in the absence of circumstances permitting the inference of lack of reasonable precautions, does not suffice to show neglect, and the plaintiff, having the affirmative of the issue, must go forward with the evidence. *Cau. v. Texas & P. R. Co.*, 194 U. S. 427, 432, 48 L. ed. 1053, 1057, 24 Sup. Ct. Rep. 663, 16 Am. Neg. Rep. 659; *Western Transp. Co. v. Downer*, 11 Wall. 129, 135, 20 L. ed. 160, 161; *DeGrau v. Wilson*, 17 Fed. 698, 700, 701, affirmed in 22 Fed. 560; *Clafin v. Meyer*, 75 N. Y. 260, 262, 263, 31 Am. Rep. 467; *Whitworth v. Erie R. Co.*, 87 N. Y. 413, 419, 420; *Draper v. Delaware & H. Canal Co.*, 118 N. Y. 122, 123, 23 N. E. 131; *St. Louis, I. M. & S. R. Co. v. Bone*, 52 Ark. 26, 11 S. W. 958; *Lyman v. Southern R. Co.*, 132 N. C. 721, 44 S. E. 550; *Lancaster Mills v. Merchants Cotton-Press & Storage Co.*, 89 Tenn. 1, 24 Am. St. Rep. 586, 14 S. W. 317; *National Line S. S. Co. v. Smart*, 107 Pa. 492; *Denton v. Chicago, R. I. & P. R. Co.*, 52 Iowa 161, 35 Am. Rep. 263, 2 N. W. 1093; *Cox v. Central Vermont R. Co.*, 170 Mass. 129, 49 N. E. 97; *Yazoo & M. Valley R. Co. v. Hughes*, 94 Miss. 242, 22 L. R. A. (N. S.) 975, 47 So. 662; 24 Am. Dec. 150-153, note; 22 L. R. A. (N. S.) note, pp. 975-980. In the present case, it is undisputed that the loss was due to fire which destroyed the company's warehouse with its contents, including the property in question. The fire occurred in the early morning when the depot and warehouse were closed. The cause of the fire did not appear, and there was nothing in the circumstances to indicate neglect on the part of the railway company. The trial court denied the motion for a direction of a verdict, and charged the jury that 'the burden of showing that there was no negligence is on the defendant.' Applying the rule established by the state decisions (*Brunson v. Atlantic Coast Line R. Co.*, 76 S. C. 9, 9 L. R. A. (N. S.) 577, 56 S. E. 538; *Fleischman v. Southern R. Co.*, 76 S. C. 237, 9 L. R. A. (N. S.) 519, 56 S. E. 974; see also *Wardlaw v. South Carolina R. Co.*, 11 Rich. L. 337), the supreme court of the state overruled the defendant's objection and sustained the judgment. 99 S. C., p. 424. It has been recognized by the state court, as was said in the Fleischman case, *supra*, that the rule it applies is a 'somewhat exceptional rule' to which the court adheres 'notwithstanding the great number of opposing authorities in other jurisdictions.' 76 S. C., p. 248.

"For the reasons we have stated, we think that the obligation of the railway company was not governed by the state law, and that, in this view, the exceptions of the plaintiff in error were well taken. Judgment reversed."

The effect of the decision of the United States Supreme Court in *Southern Ry Co. v. Prescott*, *supra*, is to hold that the bill of lading represents the bailment contract for all services in connection with the bailment, and includes in addition to the transportation service, all services in connection with the receipt, delivery, elevation, transfer in transit, ventilation, refrigeration or icing, storage, and handling of the property transported, and that such bailment contract provides for a dual liability of the bailee, viz.: An extraordinary liability as a common carrier up to within forty-eight hours after notice of the arrival of the goods has been given the consignee, and after the expiration of such period the liability of the bailee is that of a warehouseman.

1. *Southern Ry. Co. v. Prescott* (1916), 240 U. S. 632, 36 Sup. Ct. Rep. 469, 60 L. Ed. 836, 837, et seq.

2016-S. LOSS OF GOODS WHILE IN THE CARRIER'S WAREHOUSE AT AN INTER-MEDIATE POINT.

A released-valuation clause in an interstate bill of lading, based upon a difference in the carrier's tariffs on file with the Interstate Commerce Commission, is valid and controlling, although the loss occurs while the freight is in the carrier's warehouse at an intermediate point, conformably to the provisions of one of such tariffs, which confers the right in transit of free storage and diversion at that point, the bill of lading reciting that the shipment is to be held at that point for orders, and providing that every service to be performed thereunder is subject to all the conditions therein contained.<sup>1</sup>

No new contract of warehousing, wholly independent of the contract of carriage, was created by a letter from the carrier to an interstate shipper, who had then enjoyed nearly two months' storage at an intermediate point, which stated that the goods were held there in storage subject to a circular therein enclosed, which was a copy of the carrier's tariff on file with the Interstate Commerce Commission giving the right in transit to free storage, and diversion at that point.<sup>2</sup>

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1. Western Transit Co. v. Leslie & Co., Ltd. (1917), 242 U. S. 448, 37 Sup. Ct. Rep. 133, 61 L. Ed. 423.

2. Ibid.

2016-T. MISSTATEMENT BY THE SHIPPER OF THE VALUE OF THE PROPERTY TRANSPORTED.

See "*Penalties and forfeitures—Criminal proceedings*," Section 2021, *post*.

2016-U. SIGNATURE OF SHIPPER TO THE RELEASED-VALUATION CLAUSE IN A BILL OF LADING.

Rule 6 of the Southern Classification provides that where the tariff offers a reduced rate based on a certain fixed valuation a release, in the form specified in the tariff and containing the agreed valuation, must be written and signed by the shipper on the face of the bill of lading. As applied to a case where the shipper indorses the released valuation on the bill of lading, but, not knowing the requirements of the rule, omitted to indorse the special form across its face, it was *Held*, That the rule is unreasonable and that it is the carrier's duty to secure the shipper's signature to such a release on the bill of lading when it has reasonable notice of his desire to take advantage of the lower rate upon a released valuation.<sup>1</sup>

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1. Conf. Rul. Bul. Rule 226 (Nov. 9, 1909.)

2016-V. ADMINISTRATIVE POWER OF THE INTERSTATE COMMERCE COMMISSION OVER STIPULATIONS IN CARRIER'S BILLS OF LADING AFFECTING LIABILITY.

See "*Administrative power of the Interstate Commerce Commission over stipulations in carrier's bills of lading affecting liability*," Section 2020-B, *post*, and "*Bills of Lading and Contracts of Shipment*," Chapter 8, *ante*.



2016-W. FORMS OF UNIFORM BILLS OF LADING PRESCRIBED BY THE INTERSTATE COMMERCE COMMISSION FOR USE IN INTERSTATE AND FOREIGN COMMERCE.

*Order of Interstate Commerce Commission prescribing forms of domestic and export bills of lading.*

The following is a copy of the order of the Interstate Commerce Commission issued in *In the Matter of Bills of Lading*.<sup>1</sup> The form of domestic and export bills of lading which were prescribed by the Interstate Commerce Commission, and which were printed as Appendix "B" and Appendix "D", respectively, in the report of the Commission, are reproduced below.

*Alaska S. S. Co. v. United States*<sup>2</sup> was a suit instituted to annul the order of the Interstate Commerce Commission requiring carriers to adopt certain modified bills of lading forms pertaining to domestic and export traffic. The majority of the three judges who heard the case in the District Court for the Southern District of New York held that the Commission did not possess the jurisdiction exercised by it in making the order. In *United States v. Alaska S. S. Co.*<sup>3</sup> the United States Supreme Court, without determining the question of jurisdiction of the Commission, and for the reason that the case had been rendered moot by the passage of the Transportation Act, 1920, ordered the petition dismissed without cost to either party and without prejudice to the rights of the complainant to assail in the future any order of the Interstate Commerce Commission prescribing forms of bills of lading after the enactment of the new legislation. For a full consideration of this matter, see "*Administrative power of the Interstate Commerce Commission over stipulations in carriers' bills of lading affecting liability*," Section 2020, *post*. In the meantime the Commission has indefinitely postponed the effective date of its order and carriers parties thereto are not required to use the forms therein.

Section 25 of the Interstate Commerce Act, as amended by the Transportation Act of February 28, 1920, authorizes the issuance of through bill of lading in foreign commerce when space on a vessel is reserved, and empowers the Interstate Commerce Commission to prescribe the form of such through bill of lading. See "*Limitation of vessel owner's liability in foreign commerce*," Section 2009, *ante*.

In the note to this section is reproduced the report of the Interstate Commerce Commission wherein is analyzed the limited-liability provisions of the Uniform Bill of Lading which was proposed by carrier and shipping interests in this proceeding. These conference forms of domestic and export bills of lading were printed as Appendix "A" and Appendix "C" in the Commission's report.<sup>4</sup>

"ORDER.

"At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 14th day of April, A. D. 1919.

No. 4844.

"In the Matter of Bills of Lading.

"*It appearing*, That by order made upon its own motion on May 6, 1912, the Commission entered upon an investigation for the purpose of determining whether the rules, regulations, and practices in connection with the form and substance and the issuance, transfer and surrender of bills of lading, the conditions contained therein, and other practices connected therewith are unjust, unreasonable, unjustly discriminatory, unduly prejudicial, or otherwise unlawful, and taking such action in connection with bills of

lading as may be authorized by law to prevent further violations of the provisions of the act to regulate commerce, should any violations be disclosed by said investigation:

*"It further appearing, That due notice of the said proceeding of investigation and of the matters and things therein involved has been given to and served upon the Director General of Railroads and upon all common carriers, except express companies, engaged in the transportation of property by rail or by water subject to the act to regulate commerce, and the case having been fully heard and submitted by the parties, and full investigation of all the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, in which said report it is found, as more particularly set forth therein, that carriers parties to this proceeding have been and are at the present time maintaining and enforcing rules and regulations contained in their present bills of lading, and are engaging in practices thereunder, which are unjust, unreasonable, or otherwise in violation of certain provisions of the law as more particularly set forth in the said report, which said report is hereby referred to and made a part hereof:*

*"And it further appearing, That the said report includes, and has appended thereto, two forms of bills of lading, referred to and designated in said report as Appendixes B and D, and that the Commission finds that the said forms of bills of lading would be just, reasonable, and lawful bills of lading to be used upon the lines of all said common carriers subject to the act to regulate commerce:*

*"It is ordered. That Walker D. Hines, Director General of Railroads, and all said common carriers subject to the act to regulate commerce, heretofore served with notice of this proceeding and parties thereto, be, and they are hereby, notified and required to cease and desist on or before August 8, 1919, from using their present bills of lading to the extent that the provisions and regulations contained therein are inconsistent with or different from the provisions and regulations contained in the forms of bills of lading herein referred to and designated as Appendixes B and D.*

*"It is further ordered, That the said Walker D. Hines, Director General of Railroads, and all said carriers subject to the act to regulate commerce, heretofore served with notice of this proceeding and parties thereto, be, and they are hereby, notified and required to adopt and put in use on or before August 8, 1919, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the act to regulate commerce, and thereafter to use and employ, uniformly when they issue bills of lading covering shipments, other than live stock, moving in interstate commerce, as required by and defined in section 20 of the act to regulate commerce, the said certain forms of bills of lading referred to as Appendixes B and D.*

*"And it is further ordered, That this order shall continue in force for a period of not less than two years from the date when it shall take effect.*

*"By the Commission.*  
(SEAL.)

*"GEORGE B. MCGINTY.*  
*Secretary."*





## UNIFORM STRAIGHT BILL OF LADING CONDITIONS.

SEC. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of property upon consignee's order, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from delay caused by riots or strikes.

In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations, or authorities, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur or damages they may be required to pay by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

SEC. 2. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route, the liability of the carrier shall be the same as though the entire carriage were by rail. If the property covered by this bill of lading is hidden from view and the shipper has specifically stated in this bill of lading the value of the property, no carrier shall be liable beyond the amount so specifically stated, whether or not the loss or damage occurs from negligence: *Provided*, in all cases not prohibited by law, that where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

Except where the loss, damage, or injury complained of is due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, as conditions precedent to recovery, claims must be made in writing to the originating or delivering carrier within six months after delivery of the property (or in case of export traffic, within nine months after delivery at port of export), or in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed. *Suits for loss, damage, or delay shall be instituted only within two years and one day after delivery of the property, or, in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed.*

Any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected, upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: *Provided*, That the carrier reimburse the claimant for the premium paid thereon.

SEC. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary coeage and bailing at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

SEC. 4. Property not removed by the party entitled to receive it within the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or, at the option of the carrier, may be stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the carrier: *Provided*, That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published: *Provided*, That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent, or given.

Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale: *Provided*, That if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.



Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels.

Sec. 5. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and in such cases the goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor shall not be liable for such charges. Nothing herein shall limit the right of the carrier to require at time of shipment the prepayment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

Sec. 9. Any alteration, addition, or erasure of this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier, issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

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\*NOTE: In *Decker & Sons v. Director General, Minneapolis & St. L. Rd. Co.* (1919), 55 I. C. C. Rep. 453, the Commission held this provision of the bill of lading to be unreasonable, unjustly discriminatory and unduly prejudicial. Clearly, this limitation in the bill of lading is in contravention of the provision of Section 20 of the Interstate Commerce Act making it unlawful for a carrier to provide a shorter time for the institution of suits than two years, and further providing that such period for the institution of suits is to be computed from the day that notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. See *National Industrial Traffic League v. American Railway Express Co.* (1920), 58 I. C. C. Rep. 304, et seq.

NOTE.—It is understood that where port (A) is not the receiving port of the foreign exporting steamship company, and any other port in the United States is named as port (A), the property will be transported subject to Condition Number Eleven (11) under Heading One (1), which follows.



## UNIFORM EXPORT BILL OF LADING CONDITIONS.

Any alteration, addition, or erasure herein which shall be made without an indorsement hereon signed by the agent of the carrier issuing this bill of lading shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

This bill of lading is not to be used on traffic from a point in the United States destined to a point in an adjacent foreign country.

### I.

With respect to the service until delivery at the port (A) first mentioned above, it is agreed that:

1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at the port of export, or tender of delivery of the property to the party entitled to receive it has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or from riots or strikes, or for country damage to cotton.

In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations, or authorities, or for the carrier's dispatch, at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when the property is so discharged, or the property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to the property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities, nor for detention, loss or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable except in case of negligence for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

2. In issuing this bill of lading this company agrees to transport only over its own line and acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its own water line or its portion of the through route, nor after said property has been delivered to the next carrier.

3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route, the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss, damage, including loss or damage arising from delay for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if paid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the port of export or to the carrier issuing this bill of lading within nine months after delivery of the property at said port (A), or, in case of failure to make such delivery, then within nine months after a reasonable time for such delivery has elapsed; and claims so made against said delivering or issuing carrier shall be deemed to have been made against any carrier which may be liable hereunder. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: *Provided*, That the carrier reimburse the claimant for the premium paid thereon.

4. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary coepage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression.

5. Property not removed by the exporting carrier, or the party entitled to receive it, within the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at port (A) has been duly sent or given, and after placement of the property for delivery at port (A), or tender of the property for delivery upon order of the party entitled to receive it has been made, may be kept in vessel, car, depot, or place of delivery of the carrier or warehouse, subject to the tariff charge for storage and to the carrier's responsibility as warehouseman, only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at port (A), or other available place, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent, shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels.

6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

7. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.



8. The owner or consignee shall pay the freight, and average, if any, and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If, upon inspection, it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

9. Except in case of diversion from rail to water route, as provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances, whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall have the liberty to call at any port or ports, to tow and be towed, to transfer, transship, or lighter, to load and discharge goods at any time, and assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence, such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

If the shipowner shall have complied with the provisions of section 3 of the Harter Act, it is hereby agreed that the owners or consignees of the cargo shall contribute with the shipowner in general average, and shall pay any salvage or special charges properly incurred, even though the necessity for the sacrifice or expenditure was brought about by fault in navigation or management of the ship.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

10. No carrier shall be liable for delay not occurring on its own line, or the result of its negligence, nor in any respect other than as warehouseman, while the property awaits further conveyance after proper tender of delivery to the next connecting carrier has been made, and in case the whole or any part of the property specified herein be prevented by any cause from going from the port of export in the first vessel of the ocean line for which intended leaving after arrival of such property at the said port, the carrier hereunder then in possession is at liberty to forward said property by succeeding vessel of said line, or, if deemed necessary, by any other vessel.

This contract is executed and accomplished, and all liability hereunder terminates upon the delivery of the said property to the exporting steamer, her master, agents, or servants, or to the exporting steamship company, or subject to existing delivery arrangements, if any, on the pier usually used by the exporting steamer at the port of export, whether or not the same may be the property of or used as a warehouse by the inland carrier also, and the inland freight and all other charges hereinbefore provided for shall be a first lien on the property, and shall be due and payable by the steamship company or vessel.

11. When the property is transported from port (A) to the receiving port of the foreign exporting vessel, and thence transhipped to port (B), all of the terms and provisions of the foregoing conditions shall apply from port (A) until the delivery at the receiving port of the foreign exporting vessel; but the transportation between port (A) and the port of transshipment is a part of the export movement.

## II.

With respect to the service after delivery at the receiving port of the foreign exporting steamship company, and until delivery at the foreign port (B) above mentioned, it is agreed that:

1. The steamer shall have liberty to sail with or without pilots; that the carrier shall have liberty to convey goods in craft and lighters to and from the steamer at the risk of the owners of the goods; and, in case the steamer shall put into a port of refuge, or be prevented from any cause from proceeding in the ordinary course of her voyage, to transship the goods to their destination by any other steamer; that the carrier shall not be liable for loss or damage occasioned by fire from any cause or wheresoever occurring; by barratry of the master or crew; by enemies, pirates, or robbers; by arrest or restraint of princes, rulers, or people, riots, strikes, or stoppage of labor; by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, or unseaworthiness of the steamer, whether existing at time of shipment, or at the beginning of the voyage, provided the owners have exercised due diligence to make the steamer seaworthy; by heating, frost, decay, putrefaction, rust, sweat, change of character, drainage, leakage, breakage, vermin, or by explosion of any of the goods, whether shipped with or without disclosure of their nature or any loss or damage arising from the nature of the goods or the insufficiency of packages; nor for inland damage; nor for the obliteration, errors, insufficiency, or absence of marks, numbers, address, or description; nor for risk of craft, hulk, or transshipment; nor for any loss or damage caused by the prolongation of the voyage, and that the carrier shall not be concluded as to correctness of statements herein of quality, quantity, gauge, contents, weight and value.

General Average payable according to York-Antwerp Rules. If the owner of the steamer shall have exercised due diligence to make said steamer in all respects seaworthy and properly manned, equipped, and supplied, it is hereby agreed that in case of danger, damage, or disaster resulting from fault or negligence of the pilot, master or crew in the navigation or management of the steamer, or from latent or other defects, or unseaworthiness of the steamer, whether existing at time of shipment, or at the beginning of the voyage, but not discoverable by due diligence, the consignees or owners of the cargo shall not be exempted from liability for contribution in General Average, or for any special charges incurred, but, with the shipowner, shall contribute in General Average, and shall pay such special charges, as if such danger, damage, or disaster had not resulted from such fault, negligence, latent, or other defects or unseaworthiness.

2. That this shipment until delivery at the port (B) is subject to all the terms and provisions of, and all the exemptions from liability contained in, the act of Congress of the United States, approved on the 13th day of February, 1893, and entitled "An act relating to the navigation of vessels, etc."

3. That the value of each package receipted for as above does not exceed the sum of one hundred dollars unless otherwise stated herein, on which basis the rate of freight is adjusted.

4. That the carrier shall not be liable for articles specified in Section 4281 of the Revised Statutes of the United States, unless written notice of the true character and value thereof is given at the time of lading and entered in the bill of lading.

5. That shippers shall be liable for any loss or damage to steamer or cargo, caused by inflammable, explosive, or dangerous goods, shipped without full disclosure of their nature, whether such shipper be principal or agent; and such goods may be thrown overboard or destroyed at any time without compensation.



6. That the carrier shall have a lien on the goods for all freights, primages, and charges, and also for all fines or damages which the steamer or cargo may incur or suffer by reason of the illegal, incorrect, or insufficient marking, numbering or addressing of packages or description of their contents.

7. That in case the steamer shall be prevented from reaching her destination by Quarantine, the carrier may discharge the goods into any depot or lazaretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

8. That the steamer may commence discharging immediately on arrival and discharge continuously, any custom of the port to the contrary notwithstanding, the Collector of the port being hereby authorized to grant a general order for discharge immediately on arrival, and if the goods be not taken from the steamer by the consignee directly they come to hand in discharging the steamer, the master or steamer's agent to be at liberty to enter and land the goods, or put them into craft or store at the owner's risk and expense, when the goods shall be deemed delivered and steamer's responsibility ended, but the steamer and carrier to have a lien on such goods until the payment of all costs and charges so incurred.

9. That if on a sale of the goods at destination for freight and charges, the proceeds fail to cover said freight and charges, the carrier shall be entitled to recover the difference from the shipper.

10. That full freight is payable on damaged or unsound goods; but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

11. That in the event of claims for short delivery when the steamer reaches her destination, the price shall be the market price at the port of destination on the day of the steamer's entry at the customhouse, less all charges saved, steamer being only responsible for such part of the goods as have been actually delivered to said steamer at the port in the United States, and steamer not liable for any loss or damage that may have occurred before such delivery, while agreeing to promptly present to inland carriers for account of owners of goods any claims for shortage or loss or damage that may have occurred before delivery at the said port.

12. That merchandise on wharf awaiting shipment or delivery be at shipper's risk of loss or damage not happening through the fault or negligence of the said owner, master, agent, or manager of the steamer, any custom of the port to the contrary notwithstanding.

13. That this bill of lading, duly indorsed, be given up to the steamer's consignee in exchange for delivery order.

14. That freight prepaid will not be returned, goods lost or not lost.

15. That parcels for different consignees collected or made up in single packages addressed to one consignee, pay full freight on each parcel.

16. That freight payable on weight is to be paid on gross weight landed from ocean steamer, unless otherwise agreed to or herein otherwise provided, unless the carrier elects to take the freight on the bill of lading weight, but inland freight and charges paid on wheat, peas, maize, or other grain, or seed, or other bulk articles, from point of shipment to seaboard, shall be paid by consignee at destination on the weight delivered on board ocean steamer.

17. It is stipulated that in case the whole or any part of the articles specified herein be prevented by any cause from going in the first steamer leaving after the arrival of such articles at said port, the carrier is only bound to forward them by succeeding steamers employed in the steamship line, or if deemed necessary by said carrier it may forward them in other steamers.

18. That the property covered by this bill of lading is subject to all conditions expressed in the regular forms of bills of lading in use by the steamship company at the time of shipment, and to all local rules and regulations at port of destination not expressly provided for by the clauses herein.

19. That if the goods are destined beyond the port (B), the transshipment to connecting carrier shall be at the risk of the owner of the goods, but at steamer's expense, and that all liability of the steamship company hereunder terminates on due delivery to connecting carrier.

### III.

With respect to the service after delivery at the port (B), and until delivery at ultimate destination, if destined beyond that port, it is agreed that:

1. In case the regular steamship service to final port of delivery should for any reason be suspended or interrupted, the carrier, at the option of the owner or consignee of the goods, or the holder of the bill of lading, may forward the goods to the nearest available port, this to be considered a final delivery; or to store them at the port (B) above mentioned at the risk and expense of the goods until regular service to final port of destination is opened again.

2. That the property shall be subject exclusively to all the conditions of the carrier or carriers completing the transit; the duty of notification above provided for shall fall exclusively within the obligation of the carrier completing the transit, and no prior carrier shall be responsible for the fulfillment of that obligation.

AND FINALLY, in accepting this bill of lading, the shipper, owner, and consignee of the goods, and the holder of the bill of lading agree to be bound by all of its stipulations, exceptions, and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee, or holder.

IN WITNESS WHEREOF, The Agent signing on behalf of the said.....

..... and .....

severally, but not jointly, hath affirmed to .....

..... bills of lading, all of this tenor and date, one of which bills being accomplished, the others to stand void.

..... Agent.

..... Agent.

(Shipper or Agent for Shipper.)

Received \$..... to apply in prepayment of the charges herein described.

I  
We accept all the conditions of this bill of lading.

1. In the Matter of Bills of Lading (1919), 52 I. C. C. Rep. 671, et seq.

2. Alaska S. S. Co. v. United States (1915), 259 Fed. Rep. 713.

3. United States v. Alaska S. S. Co. (May 17, 1920), 253 U. S. 113, 40 Sup. Ct. Rep. 448, 64 L. Ed. 808.

4. The following is the report of the Interstate Commerce Commission In the Matter of Bills of Lading (1919), 52 I. C. C. Rep. 671:

## APPENDIX A:

**FORM PROPOSED BY REPRESENTATIVES OF CARRIERS  
AND SHIPPERS**

**In Conference at Washington, D. C., April 10-15, 1916**

**Carriers' proposals with which shippers are unable to agree appear in underscored italics**

**Shippers' counter proposals indicated by marginal notes in black-faced type**

**UNIFORM STRAIGHT BILL OF LADING**  
**DUPLICATE ORIGINAL—NOT NEGOTIABLE**

Shipper's No. 

Agent's No. \_\_\_\_\_

## Company

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading,

at....., 191

from the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained (including conditions on back hereof) which are hereby agreed to by the shipper and accepted for himself and his assigns.

Mail Address of Consignee—Not for Purpose of Delivery.

Consigned to.....

Destination..... State of..... County of.....

Route .....

Car Initial..... Car No.....

No. Packages	Description of Articles, Special Marks, and Exceptions	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
				<p>If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:</p> <p>The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. (See section 7 of conditions.)</p> <p>(Signature of consignor.)</p>
				<p>If charges are to be prepaid, write or stamp here, "To be Prepaid."</p>
				<p>Received \$..... to apply in prepayment of the charges on the property described hereon.</p> <p>Agent or Cashier,</p>

NOTE.—Where the rate is dependent on value, shippers are required to state specifically in writing the value of the property.

The actual value of the property is hereby specifically stated by the shipper to be not exceeding.....

per .....

**Charges advanced :**

3

.....Shipper.....Agent.

Per..... Per.....

Permanent post-office address of shipper.....



**CARRIERS' PROPOSALS WITH WHICH SHIPPERS ARE UNABLE TO AGREE IN UNDERSCORED ITALICS.**

**CONDITIONS.**

SEC. 1. (1) The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

(2) No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. (3) For loss, damage, or delay caused by fire occurring after 48 hours (exclusive of Sundays and legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. (4) Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or from riots or strikes, or for country damage to cotton. (5) When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

(6) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged; or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. (7) Quarantine expense of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. (8) The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. (9) No carrier shall be liable, except in case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. (10) The shipper shall hold the carriers harmless from any expense they may incur or damages they may be required to pay by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

SEC. 2. (1) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. (2) Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route, the liability of the carrier shall be the same as though the entire carriage were by rail.

(3) The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the actual value of the property at the place and time of shipment under this bill of lading, including the freight charges, if paid; and where the actual value of the property has not been required to be specifically stated by the shipper in this bill of lading, such actual value shall be arrived at from the bona fide invoice price, if any, to the consignee. (4) Provided, however, That if the property is hidden from view and the shipper has specifically stated in this bill of lading the value of the property, no carrier shall be liable beyond the amount so specifically stated, whether or not the loss or damage occurs from negligence. (5) Provided, further, In all cases not prohibited by law, that where a lower value than actual value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

(6) Except where the loss, damage, or injury complained of is due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, as conditions precedent to recovery, claims must be made in writing to the originating or delivering carrier within six months after delivery of the property (or in case of export traffic, within nine months after delivery at port of export), or in case of failure to make delivery, then within six months (or nine months in case of export traffic), after a reasonable time for delivery has elapsed; and suits for loss, damage, or delay shall be instituted only within two years and one day after delivery of the property, or, in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed.

(7) Any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: (8) Provided, That the carrier reimburse the claimant for the premium paid thereon.

SEC. 3. (1) Except where such service is required as the result of carrier's negligence all property shall be subject to necessary coopeage and baling at owner's cost. (2) Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. (3) Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges, in addition to all other charges hereunder.

SEC. 4. (1) Property not removed by the party entitled to receive it within 48 hours (exclusive of Sundays and legal holidays), after notice of its arrival has been duly sent or given, may be kept in vessel, car, depot, or place of delivery of the carrier or warehouse, subject to the tariff charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful



charges, including a reasonable charge for storage. Nothing in this paragraph shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

(2) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the carrier: (3) *Provided*, That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published: (4) *Provided*, That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent, or given.

(5) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale: (6) *Provided*, That if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(7) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(8) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(9) Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and, except in case of carrier's negligence, when received from or delivered on private or other sidings or on such wharves or landings shall be at owner's risk until the cars are attached to and after they are detached from trains or until loaded into and after unloaded from vessels.

SEC. 5. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

SEC. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and in such cases the goods may be warehoused at owner's risk and expense or destroyed without compensation.

SEC. 7. (1) The owner or consignee shall pay the freight and average, if any, and all other lawful charges on said property, and, if required, shall pay the same before delivery. (2) The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor shall not be liable for such charges. (3) Nothing herein shall limit the right of the carrier to require at time of shipment the pre-payment or guarantee of the charges. (4) If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

SEC. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

SEC. 9. (1) Except in case of diversion from rail to water route, which is provided for in section 2 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with statute or this section, and subject also to the conditions that no such carrier or party in possession shall be liable for any loss or damage resulting from fire, from any cause whatever, or for any loss or damage resulting from the perils of the lakes, seas, or other waters; or from permin, leakage, chafing, breakage, heat, cold, frost, wet, or change in weather, or by riots, strikes, stoppage of labor or threatened violence, or delay caused by stress of weather, or causes beyond the carrier's control, explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery, or appurtenances, whether existing prior to, at the time of, or after sailing; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. (2) And any vessel carrying any or all of the property herein described shall have the liberty to call at any port or ports, to tow and be towed, to transfer, to transship, to lighter, to load and discharge goods at any time, and assist vessels in distress and to deviate for the purpose of saving life or property; for docking and for repairs. (3) Such water carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry such property upon deck.

(4) If the shipowner shall have complied with the provisions of section 3 of the Harter Act, it is hereby agreed that the owners or consignees of the cargo shall contribute with the shipowner in general average, and shall pay any salvage or special charges incurred, even though the necessity for the sacrifice or expenditure was brought about by fault in navigation or management of the ship.



(5) *If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this bill of lading.*

(6) *The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors when performed by or on behalf of the rail carrier. (Sec. 9 to be revised by carriers.)*

SEC. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without any indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

### SHIPPERS' COUNTER PROPOSALS

Sec. 1. To eliminate the following language, commencing with the word "Differences" in the second line of paragraph two of Section 1, as follows: "Differences in the weights of grain, seed, or other commodities caused by;" also commencing with the word "or" in the second line of said paragraph immediately following the word "shrinkage," the following language: "or discrepancies in elevator weights."

Shippers propose the insertion of the following provision in lieu of the second sentence of second paragraph of Section 1, viz: "The liability of the carrier as a common carrier shall terminate at such time as is provided or determined by law."

Eliminate without substitution the following words in sentence three of paragraph two of Section 1, viz: "occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request or."

In lieu of the last sentence of paragraph two of Section 1 the shippers propose the following: "Property not customarily transported in open cars, when transported on open cars at the request of the shipper, shall be at owner's risk as to loss or damage resulting directly from the use of such open car, provided such loss or damage could not have been prevented by reasonable care by the carrier or party in possession; provided, further, however, that in case of loss thereof or damage thereto by fire, the liability of the carrier or party in possession shall be the same as if the property had been carried in a closed car, and the burden to prove that the carrier exercised reasonable care shall be upon the carrier."

Sec. 2. In lieu of the first sentence of the second paragraph of Section 2, the shippers propose the following, viz: "The amount of any loss or damage to property, or loss or damage due to delay in delivery thereof under this bill of lading for which the carrier is liable by law, shall be the full actual loss, damage, or injury, including freight charges, if paid."

Sec. 4. Eliminate without substitution all of the first paragraph of Section 4.

Eliminate without substitution all of the language in the sixth paragraph of Section 4 after the word "vessels" appearing the second time in the second line of said sixth paragraph, and beginning "and except in case of carrier's negligence," etc., to the end of the sentence.

Insert as a new paragraph between the second and third paragraphs of Section 4, "Where the said property provided for in this bill of lading is lost or destroyed, resulting in non-delivery of the shipment, the carrier or party in possession shall immediately give notice thereof both to consignor and the consignee." "If the property covered by this bill of lading is plainly marked with the name and address of the consignor, or if the carrier's agent at destination has otherwise specific notice thereof in writing, and such property is refused or unclaimed at destination, the carrier or party in possession thereof shall send notice of such refusal or nonclaim to the consignor within such time and by such means as may, in the circumstances, be reasonable."

Sec. 7. Shippers also propose that there should be inserted in the draft of the bill, in line 3 of Section 7, immediately following the word "lading" the following words: "or in a written order of reconsignment."

Sec. 9. Shippers suggest elimination of all of Section 9 except the last paragraph thereof, which the shippers suggest should read as follows: "The transportation of any property under the terms of this bill, by lighter, car float, or car ferry, in or across rivers, harbors or lakes, shall be deemed to be transportation by rail."

## APPENDIX C.

**FORM PROPOSED BY REPRESENTATIVES OF CARRIERS  
AND SHIPPERS**

**In Conference at Washington, D. C., April 10-15, 1916**

**Shippers' counter proposals indicated by marginal notes in black-faced type**

**Carriers' proposals with which shippers are unable to agree appear in underscored italics**

# UNIFORM EXPORT BILL OF LADING

## Company

Bill of Lading No.....

Contract No. ....

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this bill of lading at..... 191, from ..... the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, numbered, consigned, and destined as indicated below (but it is mutually understood and agreed that the description of the condition of the cotton does not relate to insufficiency of or the torn condition of the covering, nor to any damage resulting therefrom, and that no carrier shall be responsible for any damage of such nature, nor for any damage not caused by its

negligence), to be carried to the port (A) of .....  
(see Note immediately preceding conditions), and thence by.....

..... to the foreign port (B) .....  
(or so near thereto as steamer may safely get, with liberty to call at any port or ports in or out of the customary route), and to be there delivered in like good order and condition as above consigned, or to consignee's assigns, or to another carrier on the route to destination if consigned beyond said port (B), upon payment, immediately on discharge of the property, of

the freight thereon at the rate from .....  
to ..... of ..... cents.

United States gold currency, per one hundred pounds gross weight.....

pounds, and advanced charges ..... (\$.....), with all  
other charges and average, without any allowance of credit or discount; settlement to be made

on the basis of ..... (foreign equivalents and  
rate of exchange to be stated if possible).

In consideration of the rate of freight herein named, it is hereby mutually agreed by each carrier, severally but not jointly, that the service to be performed by it hereunder shall be subject to the conditions not prohibited by law, whether printed or written, herein contained, which are hereby agreed to by the shipper and by him accepted for himself and his assigns.

The inland proportion of the rate to the port (A) of.....  
is ..... cents per one hundred pounds.

[illegible]

NOTE.—Where the rate is dependent on value, shippers are required to state specifically in writing the value of the property.

The actual value of the property is hereby specifically stated  
by the shipper to be not exceeding.....  
per .....

\*..... weight.....  
subject to correction) .....

\*United States law requires agent issuing bill of lading to write either "shipper's" or "carrier's" before "weight."

ATTENTION IS CALLED TO THE FACT THAT the ocean rate is based on a standard bale of compressed cotton from a gin box not exceeding twenty-seven (27) inches by fifty-four (54) inches, compressed to a density of at least twenty-two and one-half (22½) pounds per cubic foot. Any bale from a gin box exceeding these dimensions will be assessed an extra ocean freight charge per bale. All bales that are, when delivered to the ship, of not greater width than thirty (30) inches or greater length than sixty (60) inches will be accepted as baled in a gin box not exceeding twenty-seven (27) inches by fifty-four (54) inches.

NOTE.—It is understood that where port (A) is not the receiving port of the foreign exporting steamship company, and any other port in the United States is named as port (A), the property will be transported subject to Condition Number Eleven (11) under Heading One (I), which follows.



## CONDITIONS.

Any alteration, addition or erasure herein which shall be made without an indorsement hereon signed by the agent of the carrier issuing this bill of lading shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

### I.

With respect to the service until delivery at the port (A) first mentioned above, it is agreed that:

1. (1) The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto except as hereinafter provided.

(2) No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. (3) For loss, damage or delay caused by fire occurring after forty-eight hours (exclusive of Sundays and legal holidays) after notice of the arrival of the property at the port of export has been duly sent or given, the carrier's liability shall be that of warehousemen only. (4) Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from said negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or from riots or strikes, or for country damage to cotton. (5) When in accordance with general custom, or on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence (and the burden to prove freedom from such negligence shall be on the carrier or party in possession).

(6) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations, or authorities, or for the carrier's dispatch, at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when the property is so discharged, or the property may be returned by carrier at owner's expense to shipping point, earning freight both ways. (7) Quarantine expenses of whatever nature or kind upon or in respect to the property shall be borne by the owners of the property or be a lien thereon. (8) The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities, nor for detention, loss or damage of any kind occasioned by quarantine or the enforcement thereof. (9) No carrier shall be liable except in case of negligence for any mistake or inaccuracy in any information furnished by the carrier, its agent, or officers, as to quarantine laws or regulations. (10) The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

2. (1) In issuing this bill of lading this company agrees to transport only over its own line and acts only as agent with respect to the portion of the route beyond its own line.

(2) No carrier shall be liable for loss, damage, or injury not occurring on its own road or its own water line or its portion of the through route, nor after said property has been delivered to the next carrier.

3. (1) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch unless by specific agreement indorsed hereon. (2) Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination, but if such diversion shall be from a rail to a water route, the liability of the carrier shall be the same as though the entire carriage were by rail.

(3) The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if paid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

(4) Claims for loss, damage, or delay must be made in writing to the carrier at the port of export or to the carrier issuing this bill of lading within nine months after delivery of the property at said port (A), or, in case of failure to make such delivery, then within nine months after a reasonable time for such delivery has elapsed; and claims so made against said delivering or issuing carrier shall be deemed to have been made against any carrier which may be liable hereunder. (5) Unless claims are so made the carrier shall not be liable.

(6) Any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: *Provided*, That the carrier reimburse the claimant for the premium paid thereon.

4. (1) Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary cooerage and baling at owner's cost. (2) Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression.

5. (1) Property not removed by connecting carrier or the party entitled to receive it within forty-eight hours, exclusive of Sundays and legal holidays, after its arrival at port (A) may be kept in vessel, car, depot, or place of delivery of the carrier or warehouse, subject to the tariff charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at port (A), or other available place, at the cost of the owner, and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

(2) Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent, shall be entirely at risk of owner after unloaded from cars



or vessels or until loaded into cars or vessels, and, except in case of carrier's negligence, when received from or delivered on private or other sidings, or on such wharves or landings shall be at owner's risk until the cars are attached to and after they are detached from trains, or until loaded into and after unloaded from vessels.

6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are endorsed hereon.

7. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

8. (1) The owner or consignee shall pay the freight, and average, if any, and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. (2) If, upon inspection, it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

9. (1) Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with statute or this section, and subject also to the conditions that no such carrier or party in possession shall be liable for any loss or damage resulting from fire, from any cause whatever, or for any loss or damage resulting from the perils of the lakes, seas, or other waters; or from vermin, leakage, chafing, breakage, heat, cold, frost, wet, or change in weather, or by riots, strikes, stoppage of labor or threatened violence, or delay caused by stress of weather, or causes beyond the carrier's control, explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, whether existing prior to, at the time of, or after sailing, or unseaworthiness; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. (2) And any vessel carrying any or all of the property herein described shall have the liberty to call at any port or ports, to tow and be towed, to transfer, to transship, to lighter, to load and discharge goods at any time and assist vessels in distress, and to deviate for the purpose of saving life or property, for docking and for repairs. (3) Such water carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry such property upon deck.

(4) If the shipowner shall have complied with the provisions of Section 3 of the Harbor Act, it is hereby agreed that the owners, or consignees, of the cargo shall contribute with the shipowner in general average, and shall pay any salvage or special charges incurred, even though the necessity for the sacrifice or expenditure was brought about by fault in navigation or management of the ship.

(5) The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors when performed by or on behalf of the rail carrier.

(6) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this bill of lading. (Sec. 9 to be revised by carriers.)

10. (1) No carrier shall be liable for delay, nor in any respect other than as warehouseman, while the property awaits further conveyance, and in case the whole or any part of the property specified herein be prevented by any cause from going from the port of export in the first vessel of the ocean line for which intended leaving after arrival of such property at the said port, the carrier hereunder then in possession is at liberty to forward said property by succeeding vessel of said line, or, if deemed necessary, by any other vessel.

(2) This contract is executed and accomplished, and all liability hereunder terminates upon the delivery of the said property to the exporting steamer, her master agents, or servants, or to the exporting steamship company, or subject to existing delivery arrangements, if any, on the pier usually used by the exporting steamer at the port of export, whether or not the same may be the property of or used as a warehouse by the inland carrier also, and the inland freight and all other charges hereinbefore provided for shall be a first lien on the property, and shall be due and payable by the steamship company or vessel.

11. When the property is transported from port (A) to the receiving port of the foreign exporting vessel, and thence transshipped to port (B), all of the terms and provisions of the foregoing conditions shall apply from port (A) until the delivery at the receiving port of the foreign exporting vessel; but the transportation between port (A) and the port of transshipment is a part of the export movement.

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## II.

With respect to the service after delivery at the receiving port of the foregoing exporting steamship company, and until delivery at the foreign port (B) above mentioned it is agreed that:

1. The steamer shall have liberty to sail with or without pilots; that the carrier shall have liberty to convey goods in craft and lighters to and from the steamer at the risk of the owners of the goods; and, in case the steamer shall put into a port of refuge, or be prevented from any cause from proceeding in the ordinary course of her voyage, to transship the goods to their destination by any other steamer; that the carrier shall not be liable for loss or damage occasioned by fire from any cause or wheresoever occurring; by barratry of the master or crew; by enemies, pirates, or robbers; by arrest or restraint of princes, rulers, or people, riots, strikes, or stoppage of labor; by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, or unseaworthiness of the steamer, whether existing at time of shipment, or at the beginning of the voyage, provided the owners have exercised due diligence to make the steamer seaworthy; by heating, frost, decay, putrefaction, rust, sweat, change of character, drainage, leakage, breakage, vermin, or by explosion of any of the goods, whether shipped with or without disclosure of their nature or any loss or damage arising from the nature of the goods or the insufficiency of packages; nor for



inland damage; nor for the obliteration, errors, insufficiency, or absence of marks, numbers, address or description; nor for risk of craft, hulk, or transshipment; nor for any loss or damages caused by the prolongation of the voyage, and that the carrier shall not be concluded as to correctness of statements herein of quality, quantity, gauge, contents, weight, and value. General Average payable according to York-Antwerp Rules. If the owner of the steamer shall have exercised due diligence to make said steamer in all respects seaworthy and properly manned, equipped, and supplied, it is hereby agreed that in case of danger, damage, or disaster resulting from fault or negligence of the pilot, master or crew in the navigation or management of the steamer, or from latent or other defects, or unseaworthiness of the steamer, whether existing at the time of shipment, or at the beginning of the voyage, but not discoverable by due diligence, the consignees or owners of the cargo shall not be exempted from liability for contribution in General Average, or for any special charges incurred, but, with the shipowner, shall contribute in General Average, and shall pay such special charges, as if such danger, damage, or disaster had not resulted from such fault, negligence, latent, or other defects or unseaworthiness.

2. That this shipment until delivery at the port (B) is subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled "An Act relating to the navigation of vessels, etc."

3. That the value of each package receipted for as above does not exceed the sum of one hundred dollars unless otherwise stated herein, on which basis the rate of freight is adjusted.

4. That the carrier shall not be liable for articles specified in Section 4281 of the Revised Statutes of the United States unless written notice of the true character and value thereof is given at the time of lading and entered in the bill of lading.

5. That shippers shall be liable for any loss or damage to steamer or cargo, caused by inflammable, explosive, or dangerous goods, shipped without full disclosure of their nature, whether such shipper be principal or agent; and such goods may be thrown overboard or destroyed at any time without compensation.

6. That the carrier shall have a lien on the goods for all freights, primages, and charges, and also for all fines or damages which the steamer or cargo may incur or suffer by reason of the illegal, incorrect, or insufficient marking, numbering, or addressing, of packages or description of their contents.

7. That in case the steamer shall be prevented from reaching her destination by quarantine, the carrier may discharge the goods into any depot or lazaretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

8. That the steamer may commence discharging immediately on arrival and discharge continuously, any custom of the port to the contrary notwithstanding, the Collector of the port being hereby authorized to grant a general order for discharge immediately on arrival, and if the goods be not taken from the steamer by the consignee directly they come to hand in discharging the steamer, the master or steamer's agent to be at liberty to enter and land the goods, or put them into craft or store at the owner's risk and expense, when the goods shall be deemed delivered and steamer's responsibility ended, but the steamer and carrier to have a lien on such goods until the payment of all costs and charges so incurred.

9. That if on a sale of the goods at destination for freight and charges, the proceeds fail to cover said freight and charges, the carrier shall be entitled to recover the difference from the shipper.

10. That full freight is payable on damaged or unsound goods; but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

11. That in the event of claims for short delivery when the steamer reaches her destination, the price shall be the market price at the port of destination on the lay of the steamer's entry at the Customhouse, less all charges saved, steamer being only responsible for such part of the goods as have been actually delivered to said steamer at the port in the United States, and steamer not liable for any loss or damage that may have occurred before such delivery, while agreeing to promptly present to inland carriers for account of owners of goods any claims for shortage or loss or damage that may have occurred before delivery at the said port.

12. That merchandise on wharf awaiting shipment or delivery be at shipper's risk of loss or damage not happening through the fault or negligence of the said owner, master, agent, or manager of the steamer, any custom of the port to the contrary notwithstanding.

13. That this bill of lading, duly indorsed, be given up to the steamer's consignee in exchange for delivery order.

14. That freight prepaid will not be returned, goods lost or not lost.

15. That parcels for different consignees collected or made up in single packages addressed to one consignee, pay full freight on each parcel.

16. That freight payable on weight is to be paid on gross weight landed from ocean steamer, unless otherwise agreed to or herein otherwise provided, unless the carrier elects to take the freight on the bill of lading weight, but inland freight and charges paid on wheat, peas, maize, or other grain, or seed, or other bulk articles, from point of shipment to seaboard, shall be paid by consignee at destination on the weight delivered on board ocean steamer.

17. It is stipulated that in case the whole or any part of the articles specified herein be prevented by any cause from going in the first steamer leaving after the arrival of such articles at said port, the carrier is only bound to forward them by succeeding steamers employed in the Steamship Line, or if deemed necessary by said carrier it may forward them in other steamers.

18. That the property covered by this bill of lading is subject to all conditions expressed in the regular forms of bills of lading in use by the Steamship Company at the time of shipment, and to all local rules and regulations at port of destination not expressly provided for by the clauses herein.

19. That if the goods are destined beyond port (B), the transshipment to connecting carrier shall be at the risk of the owner of the goods, but at steamer's expense, and that all liability of the Steamship Company hereunder terminates on due delivery to connecting carrier.

### III.

With respect to the service after delivery at the port (B), and until delivery at ultimate destination if destined beyond that port, it is agreed that:

1. In case the regular steamship service to final port of delivery should for any reason be suspended or interrupted, the carrier, at the option of the owner or consignee of the goods, or the holder of the bill of lading, may forward the goods to the nearest available port, this to be considered a final delivery; or to store them at the port (B) above mentioned at the risk and expense of the goods until regular service to final port of destination is opened again.

2. That the property shall be subject exclusively to all the conditions of the carrier or carriers completing the transit; the duty of notification above provided for shall fall exclusively within the obligation of the carrier completing the transit, and no prior carrier shall be responsible for the fulfillment of that obligation.

AND FINALLY, in accepting this bill of lading, the shipper, owner, and consignee of the goods, and the holder of the bill of lading agree to be bound by all of its stipulations, exceptions, and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee, or holder.

IN WITNESS WHEREOF The Agent signing on behalf of the said .....  
..... and .....  
severally, but not jointly, hath affirmed to .....  
bills of lading, all of this tenor and date, one of which bills being accomplished, the others to stand void.

..... Agent.

.....

..... Agent.

Received \$..... to apply in prepayment of the charges herein described.

I  
We accept all the conditions of this bill of lading.  
(Shippers would eliminate.)

.....  
Shipper or Agent for Shipper.  
(Shippers would eliminate)

#### COUNTER PROPOSALS BY SHIPPERS WITH RESPECT TO INLAND CONDITIONS IN THROUGH EXPORT BILL OF LADING.

SECTION 1, Paragraph 2, first sentence.—Shippers propose that the words "Differences in the weights of grain, seed, or other commodities, caused by \_\_\_\_\_ or discrepancies in elevator weights" be eliminated entirely; and that the first sentence conclude with the words "natural shrinkage."

Paragraph 2, second sentence.—That the following words, which comprise the entire second sentence, be eliminated without substitution, viz: "for loss, damage, or delay caused by fire occurring after 48 hours (exclusive of Sundays or legal holidays) after notice of the arrival of the property at the port of export has been duly sent or given, the carriers' liability shall be that of warehousemen only."

SECTION 2, Paragraphs 1 and 2.—To be eliminated entirely without substitution therefor. This is eliminating the entire Section 2.

SECTION 3, Paragraph 2.—The shippers propose as a substitute therefor the following language: "The amount of any shortage (loss of property in whole or in part) for which any carrier becomes liable shall be computed at the value of the property at the place and time of shipment under this bill of lading, including freight charges, if paid; unless a lower value has been agreed upon or is determined by the classification or tariff schedule upon which the rate is based, in either of which events such lower value shall be the maximum price to govern such computation. And for any damage or delay to property transported hereunder, the amount shall be the loss sustained by owner of the property by reason of said damage or delay."

SECTION 5, Paragraph 1.—Shippers suggest that this paragraph be eliminated entirely without substitution of any kind.

Paragraph 2.—That the following words of this paragraph should be eliminated without substitution therefor, viz: "and, except in case of carriers' negligence, when received from or delivered on private or other sidings on such wharves, or landings, shall be at owner's risk until the cars are attached to and after they are detached from trains, or until loaded into and after unloaded from vessels."

SECTION 10, Paragraph 1.—The following language in the first sentence of the first paragraph thereof should be eliminated without substitution, viz: "No carrier shall be liable for delay, nor in any respect other than as warehouseman while the property awaits further conveyance, and." The paragraph to commence with the succeeding language: "In case the whole," etc.

Paragraph 2.—The following language to be eliminated without substitution therefor, viz: "or subject to existing delivery arrangements, if any, on the pier usually used by the exporting steamer at port of export, whether or not the same may be the property of or used as a warehouse by the inland carrier also."



*Analysis by Interstate Commerce Commission of limited-liability provisions of Uniform Bills of Lading proposed by carrier and shipping interests.*

"This proceeding of investigation into the practices of carriers with respect to the form and substance, and the issuance, transfer, and surrender of bills of lading was instituted by the Commission upon its own motion and is, in effect, a resumption or continuation of the former proceeding in which the Commission made and published a report, *In the Matter of Bills of Lading*, 14 I. C. C., 346. The general subject of bills of lading and of the desirability of uniform bills has been before the Commission in one form or another several times within the last few years but notwithstanding authoritative approval by this Commission and general approval by shipping interests of the idea of a uniform bill of lading for use on lines of all carriers subject to the act to regulate commerce, efforts to secure the universal adoption and use of such an instrument have failed, so far, of the fullest measure of success, principally because the interests of some carriers, or shippers, or both, or circumstances and conditions peculiar to particular kinds of traffic, or localities, or sections of the country, have appeared to those respective interests to require special consideration in, or forms of, bills.

"During the period following the enactment of the so-called Carmack amendment to the act to regulate commerce in 1906 down to the enactment of the first Cummins amendment in 1915, several cases came before the Supreme Court of the United States involving questions of interpretation and validity of conditions and provisions in bills of lading, in which the court sustained the contractual limitations of the carrier's liability. One of these was the leading case of *Adams Express Co. v. Croninger*, 226 U. S. 491. Following the decision in that case there was a distinct change of policy on the part of carriers, generally, in the adjustment of claims made upon them for loss, damage, or injury to property. From a former policy of compromise, of making the best terms possible with the claimant which was not wholly disadvantageous to the claimant in many instances, and which, of course, was often discriminatory in its operation, a disposition was developed upon the part of many carriers to stand uncompromisingly upon their rights as defined in the bill of lading.

"Other important decisions of the Supreme Court during this period are *Kansas Southern Ry. v. Carl*, 227 U. S. 639; *Mo., Kans. & Tex. v. Harriman*, 227 U. S. 657, and *Boston & Maine Rd. v. Hooker*, 223 U. S. 97, in which latter case it was held that regulations of tariffs filed with the Commission containing provisions respecting limitations of the carrier's liability were presumed to be a part of the transportation contract, and, as such, binding upon both carrier and shipper. Perhaps the most extreme application of the doctrine was in the case of *Pierce Co. v. Wells, Fargo & Co.*, 226 U. S. 278, in which the court held that under the law (the interpretation of the Carmack amendment being involved) a shipper of a carload of automobiles in interstate commerce who had deliberately and purposely, and with full knowledge of the limitation, and for the purpose of securing a lower rate, accepted an express receipt limiting recovery to \$50, unless a greater value was declared could not recover more than the value stated. The effect of this decision was to hold that a limitation of liability in the bill of lading was valid, even though the amount stated was purely arbitrary, the court saying, 'The legality of the contract does not depend upon a valuation which shall have a relation to the actual worth of the property.'

"A few days subsequent to the decision in the latter case Congress adopted the so-called first Cummins amendment to the act, which changed the Carmack amendment and imposed liability upon the carrier for 'the full actual loss, damage, or injury to such property caused by it \* \* \* notwithstanding any limitation of liability or limitation of the amount of recovery,' whatsoever, whether expressed in the bill of lading or otherwise. These amendments had the further effect of withdrawing from the states all regulatory authority and jurisdiction over questions of loss, damage, or injury to property shipped in interstate commerce and of bringing such matters under the uniform operation and regulation of federal law.

"During this period numerous complaints alleging varying and unfair practices of carriers in the interpretation and application of the rules and regulations of their bills of lading continued to be received by the Commission. The great importance of the bill of lading, not only in transportation usage but as an assignable and negotiable instrument in everyday commercial affairs and transactions, constantly became more evident, tending to accentuate the long recognized necessity for a uniform bill of lading and conformity on the part of carriers to common practices thereunder. The situation described, and the uncertainty in which shippers, carriers, and other interests frequently found themselves involved, made it imperative for the Commission to take action for the purpose of formulating and prescribing uniform bills of lading, if it should prove practicable to do so. Such action was taken through the medium of this proceeding.

"The principal questions presented here, as well as in the cases coming before the courts, revolve around the efforts of the carrier in case of loss, damage, or injury to the goods transported by contract to limit its liability in accordance with the terms and conditions stated in its bills of lading.

"These facts justify some general observations, elementary, even, in their character, upon the nature of the carrier's liability, and the purpose and function of bills of lading; the application of the federal statutory and the common law to them, and a brief review of this and former proceedings before the Commission touching the subject in general or in particular.



## FORMER PROCEEDINGS TO SECURE UNIFORMITY OF BILLS OF LADING.

"Efforts to bring into use a uniform bill of lading were first initiated by carriers about 25 years ago, and some measure of success was attained through the adoption by carriers in central freight and trunk line association territories of forms that were substantially uniform. Action by this Commission was first taken in November, 1904, when, acting upon numerous complaints, it instituted an inquiry into certain proposed changes in the provisions of bills of lading by carriers in official classification territory. After extended hearings the Commission, in June, 1908, issued its report *In the Matter of Bills of Lading, supra*. This report dealt only with the general merchandise bill of lading. Special bills of lading for live stock and other special kinds of property were not considered. It did not undertake even to prescribe a general merchandise form of bill of lading and order its adoption because, in its view, such an order at that time would have exceeded its authority. Moreover, the situation did not seem to demand such a positive direction. It did, however, recommend the adoption by all carriers, as a uniform bill of lading, of the merchandise form proposed by a joint committee of shippers and carriers. The form recommended was generally accepted and used by carriers in official and western classification territories, but it was not adopted to any great extent by the carriers in southern classification territory. The latter group of carriers adopted, for the most part, a modified form of the approved bill which is commonly referred to as the 'revised standard bill of lading.'

## THE PRESENT PROCEEDING—SCOPE AND PURPOSES.

"Failure of carriers thus to adopt the approved bill for universal use, the apparent necessity for such an instrument, and complaints of shippers, heretofore referred to, that certain of the regulations and practices in connection with this and other forms of bills of lading in use by carriers subject to the act were unjust, unreasonable, unjustly discriminatory, unduly preferential, and otherwise unlawful, caused the Commission, on May 6, 1912, to enter an order upon its own motion, instituting the present inquiry. The order for the investigation expresses the object thus:

"For the purpose of determining whether the rules, regulations, and practices in connection with the issuance, transfer, and surrender of bills of lading, the conditions contained therein and other practices connected therewith are unjust, unreasonable, unjustly discriminatory, unduly preferential, or otherwise unlawful, and taking such action in connection with bills of lading as may be authorized by law to prevent further violations of the provisions of the aforementioned statutes, should any violations be disclosed by said investigation."

"In its report in *The Cummins Amendment*, 33 I. C. C. Rep. 682, promulgated May 7, 1915, the Commission remarked that the general subject of bills of lading was then under investigation in the present proceeding and that matters informally presented in the hearings upon the Cummins amendment might be reserved and formally presented for determination in the present proceeding. Various questions relative to the provisions of domestic forms of bills of lading and also to the various special forms of bills of lading used in connection with the transportation of particular kinds of traffic having arisen, and likewise many questions having been presented with reference to the Cummins amendment, the Commission, on December 30, 1915, assigned the present case for further hearings at different cities throughout the country with the particular purpose of developing information relative to those questions.

"The investigation is therefore extended to include consideration, not only of the rules, regulations, and practices of carriers in connection with the forms of merchandise and special bills of lading now in use, but also to the demand for other special forms of bills of lading which it is contended by interested parties should be put into use.

"During the course of these hearings it appeared that the desired end of uniformity in bills of lading might be attained, or at least advanced, through the medium of committees of representatives of carriers and shippers acting in conference among themselves and with each other. Such a plan was adopted and, after weeks of conference among themselves, the committee of counsel for the carriers submitted for consideration at a joint conference of carrier and shipper representatives three proposed uniform bills of lading in lieu of the great number and variety of forms then and now in use. These forms consisted of a so-called straight bill of lading to cover domestic merchandise shipments generally, an export bill, and a live-stock bill, and were submitted as sufficient in their judgment to provide properly for all classes of freight transported. Representatives of certain classes of shippers also submitted proposed uniform bills of lading to cover all shipments in domestic commerce and in export which were generally indorsed by shippers and shippers' organizations throughout the country, with the exception of certain shippers of perishable products and of coal. A form was also submitted on behalf of certain associations representing many of the shippers of live stock.

"With the carrier and shipper forms above referred to as a basis for discussion, a joint conference under the auspices of the Commission was held in Washington between representatives of various classes of shippers and the carriers' committee. As a result of this conference many differences of opinion, manifested in the outset, in respect to many of the provisions proposed by the respective parties to be incorporated in the uniform domestic and export bills of lading, were either harmonized or brought to clearly defined issues. The forms showing the provisional conditions agreed upon and those as to which agreement could not be reached have been printed by the Commission (Appendixes A and C), and by common consent have been accepted by all parties as working models for the domestic and export bills that shall finally be recommended (Appendixes B and D). The phraseology of the conditions as to which agreement could not be reached are printed in underscored italics and the shippers' counter proposals,



where any were made, are printed in a parallel column in black-face type on the back of the form. This mechanical arrangement facilitates the reference to the phraseology and language as to which the differences of opinion still exist.

"The record in the case, voluminous as it is, contains very little that can be accurately denominated 'evidence' in the true acceptation of the term. Most of the testimony of witnesses and statements of the parties consist of recitals showing how existing rules and regulations operate disadvantageously and how those proposed might be expected to operate advantageously to the proponents; of expressions of opinion, and arguments as to the legal aspect of the various matters and subjects discussed. Since the points of difference between the carriers and shippers with respect to the provisions of the general merchandise domestic and export forms have thus been reduced to definite issues, it will be unnecessary to consider specifically all the proposed conditions of these bills.

"From a study of the differences now existing between the carriers and shippers which have been brought to issue before us and are exhibited in Appendixes A and C as described, it will be seen that the carriers and shippers are not very far apart in respect to most of the conditions proposed to be incorporated in the domestic and export bills. Less progress was made, however, in the endeavor to reconcile differences with respect to the conditions of the live-stock bill of lading, and upon the question of the necessity, which some shippers urge exists, for the formulation and adoption of the special forms of bills of lading hitherto referred to. The progress made by the parties in their endeavors to agree upon a uniform bill of lading for domestic and export traffic makes it feasible to take up these forms for consideration first and we shall therefore discuss them by section and clause, in order, giving particular consideration to the points of disagreement between the shippers and carriers as noted on the forms exhibited in the appendixes.

#### FORMS OF BILLS OF LADING IN CURRENT USE.

"There are many forms of bills of lading now in common use throughout the country but they may, for the purposes of this report, be reduced to three general classes, dependent upon the use of the instrument, viz: (1) The general merchandise or domestic bill of lading under which most of the general merchandise traffic of the country is transported; (2) the export bill of lading under which general merchandise traffic destined to foreign countries is moved; (3) the live-stock contract or bill of lading. Since the latter must be dealt with in a supplemental report it will suffice for the present to confine our consideration to the two general classes first mentioned.

"By the so-called Pomerene bill, or bills of lading act, approved August 29, 1916, and made effective January 1, 1917, relating to bills of lading in interstate and foreign commerce, it is provided that a bill in which it is stated that the goods are consigned to a specified person is a 'straight' bill, and one in which it is stated that the goods are consigned or destined to the order of a person is an 'order' bill. The primary purpose of this law is to enlarge and enhance the negotiability features of 'order' bills of lading and by definitely fixing the law with respect to negotiability, and the imposition of greater responsibility upon carriers, to afford greater protection to those who in the course of commercial transaction handle and deal in such bills. The 'order' bill, which is made negotiable by this law, differs from the straight bill in common usage, and from the form which we shall prescribe, only in the fact that by endorsement printed on the face of the bill it is denominated an 'order' bill. The conditions printed on the back are identical and it will be unnecessary therefore in discussing the bills hereinafter to distinguish between them.

#### CONDITIONS OF THE PROPOSED BILLS.

"The working form of the general merchandise domestic form of bill of lading, or conference form, as it may be appropriately designated because evolved as a result of conferences between the shippers' and carriers' representatives held under the auspices of the Commission, contains, under the head of 'Conditions,' printed on its back, 10 sections of one or more clauses each. Clauses in 5 of the sections are in controversy. The conditions of the export bill are arranged under three heads: I. Those governing the inland service to the port of export; II. Those relating to the service after arrival at the port of export and until delivery at the foreign port; III. Those relating to the service after delivery at the foreign port and until delivery at the ultimate foreign destination. We are concerned only with those conditions that have to do with the inland service to the port of export. The conditions of this part of the bill contain 11 sections. Clauses in 7 of the sections are in controversy.

"In order to facilitate ready reference to the different parts of the domestic and export bills, the clauses in each section of the conference or working forms of bills have been numbered separately. These clause numbers appear in parenthesis in the forms shown in appendixes A and C and we shall hereafter refer to the conditions of the proposed bills by section and clause number.

#### PART 1.—THE DOMESTIC BILL OF LADING.

"The uniform general merchandise bill of lading jointly proposed by the parties (Appendix A) conforms very closely, in its fundamental features, to the uniform bill of lading recommended by the Commission in its report *In the Matter of Bills of Lading, supra*.

## FACE OF THE BILL.

"A few minor changes are suggested, viz: (1) In the space provided on the face of the bill for the name of the consignee and destination is a parenthetical enclosure, viz, (Mail address of consignee—not for purposes of delivery). It has been suggested that the wording should read, 'Mail or street address of consignee—for notification purposes only.' We approve the suggestion. (2) It is suggested that at the end of the space provided for indicating the 'Route' there should be inserted the words, 'Delivering Carrier.' We see no objection to this and therefore approve it. (3) Near the bottom on the face of the form is the following: 'Note.—Where the rate is dependent on value, shippers are required to state specifically in writing the value of the property. The actual value of the property is hereby specifically stated by the shipper to be not exceeding \_\_\_\_\_ per \_\_\_\_\_.'

"As we have seen where the proper steps have not been taken to establish rates dependent upon the value, there is no provision for the effect of a declaration or agreed statement of the value in writing. The provisions against any limitation of the carrier's liability contained in the first Cummins amendment are in full force and effect. It is only where rates are lawfully made dependent upon values and the carrier's liability as to the amount of recovery limited accordingly, that the value is required to be stated. Since the Cummins amendment does not require the shipper to state the 'actual' value in the latter instances, and since, with possibly a few exceptions, the value declared or agreed upon for purposes of rating or classifying the shipment would often be something less than the 'full actual value' of the shipment—and this is permitted by the amendment—it is possible that the word 'actual' if retained in the statement of value would not always truly represent the fact, and might prove misleading or cause misunderstanding. We think it should be stricken out and the words 'agreed or declared' substituted therefor.

## PROPOSED CONDITIONS.

"*Section 1, clause 2, differences in elevator weights.*—The present uniform and revised standard forms of bills of lading contain a provision that carriers shall not be liable for 'differences in the weights of grain, seed and other commodities caused by natural shrinkage or discrepancies in elevator weights.' The carriers desire to retain this provision in the proposed form. The shippers concede that the carrier is not liable for loss caused by natural shrinkage or the inherent nature of the property transported, but they propose the elimination of the words 'differences in the weight of grain, seed, or other commodities caused by \* \* \* or discrepancies in elevator weights.' That a slight shrinkage in the weight of grain, relatively negligible, usually occurs under ordinary transportation conditions is a fact recognized in the trade, and allowances are made therefor in commercial transactions. No point of real difference is raised with respect to this feature and it need not be further discussed.

"The circumstances out of which the controversy relative to this provision grows are best illustrated in the handling of grain shipments. When grain is received by a carrier at a country elevator for transportation to a primary grain market or other destination, or is received by a carrier at a primary market for transportation to some other market or destination, the weight given by the shipper and accepted by the carrier is ordinarily that shown by the elevator out of which the grain is loaded. This weight is inserted in the bill of lading with a condition, invariably, that it is subject to correction. Frequently, upon arrival at destination, the grain is again weighed through another elevator and a difference between the first and second elevator weights appears. Now, in such a case a difference in the weights greater than that which could result from natural shrinkage usually results from one of two causes, viz, loss in transit, or 'discrepancies,' i. e., variance in the weights of the different elevator scales. 'Discrepancy' in the sense here used is understood to mean a difference in weights due either to error in calculating and recording the results of one or both of the weighing operations, or a difference due to mechanical imperfection in one or both of the scales, as a result of which there is failure to record a correct weight.

"It is urged by those shippers who oppose the retention of this provision in the proposed bill, that it gives the carriers opportunity to decline a claim upon the ground that the alleged loss is in reality not a loss but a 'discrepancy' due to a difference in elevator weights. To illustrate: A shipper loads 60,000 pounds of wheat in a car, according to weights at original point of shipment, but the carrier delivers only 59,000 pounds according to scale weights at destination. The carrier may, and does, excuse itself by quoting this clause in the bill of lading. The practical operation of the clause is to place the hazard of transportation on the shipper, whereas the liability should properly rest with the carrier. It is contended that it is no more difficult for the carrier to determine the correct elevator weights than it is to determine the correct scale weight of loaded cars; that whether a carrier has permitted grain to be lost or stolen is a question to be determined on the facts of the particular case and that the carrier should pay for such grain as may have been lost or stolen; that the clause is in contravention of the Cummins amendment.

"The testimony of shippers' representatives is that the claim departments of many carriers stand upon this provision of the bill of lading and refuse to pay claims for actual loss of grain while the same was in the carriers' possession, and that in such instances the shipper has no recourse but must pocket his loss.

"The actual loss of grain in transit might, and doubtless would, be indicated by a difference between origin and destination weights, but the shippers seem to entertain the idea that every difference disclosed between origin and destination weights is, ipso



*facto*, proof of loss of the commodity in transit. They ignore the other possible explanations of such 'discrepancies.'

"By section 21 of the bills of lading act, reference being had to the subject of shippers' weight, load, and count, when property is loaded by the shipper, it is provided:

"Where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier, upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carriers shall not in such cases insert in the bill of lading the words 'shipper's weight,' or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

"In Illinois the state legislature, pursuant to a mandatory constitutional provision requiring it to pass all necessary laws to give effect to one of the articles of that instrument, enacted a law requiring railroad companies to weigh carefully and correctly grain at the time it was received for shipment, to give a receipt for the true and correct amount, and to weigh out and deliver the full amount of such grain, without deduction for leakage, shrinkage, or other loss. A uniform bill of lading act, held not to be repugnant to or inconsistent with the statute first referred to, provided that a carrier might insert in a bill of lading any terms or conditions, not contrary to law or public policy, which did not impair its obligation to use reasonable care, and that such terms and conditions should be binding upon the consignor receiving such bill and making no objection in writing to such terms and conditions so far as they were not contrary to law or public policy. In an action for the loss of grain in transit brought under this statute the plaintiff recovered a judgment in a circuit court of the state which, on appeal to the supreme court of the state, was reversed because of error not relevant to the question we are here considering. The bill of lading, however, contained a provision similar to that to which objection is here made, and the court in reference to the same said: 'We regard that clause in the conditions which exempts a carrier from liability for difference in the weights of grain, seed, or other commodities caused by discrepancies in elevator weights as contrary to public policy,' and further: 'We assume that "discrepancy in elevator weights" means difference between weights at the place of delivery and the place of shipment. While the railroad company is responsible for the delivery of the numbers of pounds of grain received, and its receipt in the bill of lading evidence of the quantity received, the constitutional provision was not intended to make the bill of lading an absolute policy of insurance or extend the responsibility of the carrier beyond its responsibility at common law in other respects.' *Shellabarger Elevator Co. v. Illinois Cent. R. Co.*, 278 Ill., 333.

"Under section 21 of the bills of lading act above referred to, where a shipper of bulk freight has installed and maintains adequate weighing facilities, the carrier must, upon written request, and after reasonable opportunity so to do, ascertain the kind and quantity of grain. This gives the carrier the opportunity of weighing the grain when it is shipped. The arrangement, however, does not provide a like opportunity at destination where, for instance, grain is delivered into an elevator and weighed by the elevator or consignee.

"The carrier is liable, both at common law and under the federal statute, for any actual loss of goods caused by it while in transit. If a difference in weights results from actual loss of the goods so caused by it, the carrier must pay the claim for such loss. Under the law it is the carrier's duty to collect, and the shipper's duty to pay, freight charges based upon correct, not estimated, weights. The claimed loss presents a question of fact. Whether or not a 'discrepancy' in elevator weights results from actual loss of the commodity or an error, human or mechanical, in the weighing operations, is a question of fact to be determined from all the evidence. The burden of proof to show what is the correct weight should depend, in a measure at least, upon which of the parties, carrier or shipper, is responsible for the accuracy of the weights.

"It would appear, therefore, that the disputed provision relative to 'discrepancies in elevator weights' is of no real effect in limiting the liability of the carrier and is mere surplusage. Upon brief, one of the shipper's representatives says that it—adds nothing to and subtracts nothing from the liability of a common carrier. Its presence, however, in the uniform bill of lading, which is filed with and becomes a part of the rate and tariff authority under section 6 of the act to regulate commerce, is mischievous in actual practice and is used as a pretense by claim agents for turning down claims. It thus becomes a source of discord between carriers and shippers and tends to create strong prejudices in the minds of shippers against railroads and is a constant source of commercial irritation.

"We are of the opinion that the words 'differences in the weights of grain, seed, or other commodities caused by \* \* \* or discrepancies in elevator weights' impart an unlawful and unreasonable meaning into bills of lading and should be stricken from the uniform bill.

"Section 1, clause 3, liability of carrier as insurer and warehouseman for loss, damage to the distinctions in the degree of the carrier's liability and obligation as an insurer proposed bill relate, in whole or in part, to warehousing and storage of goods; that is, to the distinctions in the degree of the carrier's liability and obligation as an insurer of the goods on the one hand, and that of a mere bailee or warehouseman on the other after the goods have arrived at destination and are still in its possession; or while they may be held in transit upon proper request of the shipper or owner. Indeed, it is upon this important question, i. e., the degree or character of the carrier's responsibility, that the greatest conflict of interest between the shipper and carrier occurs. The shippers earnestly oppose the carriers' proposals, which are related in principle and which at the present time constitute, and for some years past have constituted, conditions in the uniform and standard bills of lading. The proposals are found in section 1, clauses 3 and 4, and section 4, clause 1, of the proposed bill and will be considered in the order in which they appear in the proposed bill.



"The first proposal, as expressed in section 1, clause 3, with respect to the carrier or party in possession of the property, is that—

for loss, damage, or delay caused by fire occurring after 48 hours (exclusive of Sundays and legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only.

"At the conference between the shippers' and carriers' representatives the shippers objected to this provision and proposed in lieu thereof the following phraseology, to wit, 'The liability of the carrier as a common carrier shall terminate at such time as is provided or determined by law.'

"Reduced to its simplest terms the question at issue here is: At what time in case of loss, damage, or injury caused by fire, shall the carrier's liability as an insurer of the goods transported by it be deemed to have ceased and its liability have been reduced to that of a warehouseman only? The answer involves some preliminary study of the carrier's liability in connection with its duty to transport and deliver. The common-law liability of the carrier attaches at the time of delivery to and acceptance by it of the goods for immediate transportation. *1 Hutch. Carr. (3d Ed.)*, §112. The duty to make delivery to the consignee of the goods transported is an essential part of the carrier's obligation whether expressed in the contract or not. The question when its liability as a carrier terminates and that of warehouseman begins is an exceptionally important one and presents many delicate phases. A valid delivery involves, according to the authorities, four requisites, viz: Delivery, (1) to the right person, (2) at a reasonable time, (3) at the proper place, and (4) in a proper manner. *2 Hutch. Carr. (3d Ed.)*, §§662-664.

"The bills of lading act contains no provision respecting transition from liability of a common carrier to that of a warehouseman. Questions of this nature arising in connection with interstate shipments moving under bills of lading issued pursuant to the act to regulate commerce are necessarily federal questions and the question as to responsibility under the bill of lading is none the less a federal one because it must be resolved by the application of general principles of the common law. *Southern Ry. v. Prescott*, 240 U. S., 632, citing *Adams Express Co. v. Croninger*, *supra*.

"In this country there is no uniformly accepted rule determinative of the question as to when the carrier's extraordinary liability ceases and that of a mere warehouseman is substituted, except in the case of carriers by water. The rule as to the latter is that after arrival of the goods the carrier must give the consignee actual, not constructive, notice of such arrival, and also give him a reasonable time within which to remove the goods. What constitutes a reasonable time for the removal of the goods is a question of fact, to be determined by the particular circumstances of the case. In respect of rail carriers three different rules have been evolved, familiarly known as the Massachusetts, New Hampshire, and New York rules. The latter, which has been adopted and applied in a number of states, is sometimes referred to as the Michigan rule. Under the Massachusetts rule the liability of the carrier as an insurer of the goods ends when the goods have arrived at their destination and, even without notice to the consignee, have been safely deposited upon the platform or in the warehouse of the terminal carrier. *2 Hutch. Carr. (3d Ed.)*, §701, citing *Norway Plains Co. v. R. R. Co.*, 1 Gray, 263. Under the New Hampshire rule carrier's liability ends when the goods have arrived at destination and a reasonable time during which they might have been removed by the consignee has elapsed. Under neither the Massachusetts nor New Hampshire rule is actual notice required. *2 Hutch. Carr. (3d Ed.)*, §704, citing *Moses v. The Railroad*, 32 N. H., 523. By the New York rule, if the consignee is present upon the arrival of the goods, he must take them without unreasonable delay; if he is not present, but lives at or in the immediate vicinity of the place of delivery, the carrier must notify him of the arrival of the goods, and then he must have a reasonable time in which to remove them. If, after a bona fide effort to give notice of the arrival of the goods to the consignee named, such consignee does not appear and remove them within a reasonable time, he can not hold the carrier longer as an insurer. If he is absent, unknown, or can not be found, the carrier may store them. *2 Hutch. Carr. (3d Ed.)*, §708, citing *Fenner v. Railroad*, 44 N. Y., 505, and other cases.

"The New York rule is also the law of England and of Canada. *Mitchell v. The Railway Co.*, 10 L. R. Q. B., 256; *Chapman v. Great Western Ry. Co.*, 5 Q. B. D., 278; *Richardson v. Canadian Pacific R. Co.*, 19 Ont. R., 369. It is, in effect, the same as that applicable to water carriers. Its distinctive feature is the requirement of actual notice to the party entitled thereto of the arrival of the goods, unless, after diligent effort so to do, the carrier, because of the death of the consignee, or of inability to learn his address, is unable to serve him with notice. The New York rule is obviously the more just one, since, under all the varying conditions of rail transportation of to-day, it is as impracticable for the consignee to anticipate the day and hour of arrival of trains, or the probable time of placement of cars, or tender of delivery, as it was for the consignee of goods transported by water to anticipate the time of arrival of the ship bearing his goods.

"The carriers contend: (1) That the common-law rule upon the question of the difference in liability with respect to carrier and warehouseman has not been abridged or in any way affected by federal legislation; (2) that the rule proposed does not offend against either public policy or the interstate commerce act; (3) that the length of time given after notice more than meets the common-law rule of reasonableness; (4) that the definite form of the wording meets the requirement that the privilege be clearly specified; (5) that the shippers' proposal puts the question of liability back in the same situation that existed prior to the passage of the Carmack amendment and invokes the same uncertainty and lack of uniformity which the Carmack amendment was especially



designed to avoid; and, (6) that the act gives the Commission no power to impose upon carriers a heavier liability than may be found in the statute and under the common law.

"The shippers' opposition to the carriers' proposal is predicated upon the following grounds, chiefly: (1) That a rule terminating the carrier's liability after 48 hours after the giving or sending of notice of arrival at destination would inevitably result in many instances of injustice; (2) that the provision would terminate the carrier's liability as such by the giving of notice even though, in the case of a carload shipment, the car were not placed and might not be placed for delivery within 48 hours after the giving or sending of notice of arrival; and (3) that in case of some commodities the free time under demurrage regulations for the unloading of carload shipments is more than 48 hours and that, therefore, the carrier's liability ought to extend through the time during which it is obligated, under tariff provisions, to hold the car for unloading by the shipper free of demurrage.

"Upon broader grounds, more particularly in connection with the proposed provision designated as section 4, clause 1, *infra*, but upon grounds which it will be quite as appropriate to discuss here, the shippers contend against any limitation of the carrier's liability. It is urged upon brief in behalf of one group of shippers that 'any service performed by the carrier is "transportation" and that the liability of the carrier is that of a common carrier throughout the time the property is the subject of transportation as defined in the first section of the act to regulate commerce.' \* \* \* 'That since storage and delivery are a part of transportation, the carrier must be liable throughout the course of the property (transportation?) as a common carrier. The act to regulate commerce deals only with common carriers. The Commission should not permit the carrier to limit its liability to negligence, only, while property is in storage.'

"In behalf of another group of shippers it is urged (1) that property in possession of the carrier does not receive what can properly be termed a warehouse service; that the carrier can not leave the goods in the car, no matter how long the time, and claim warehouseman liability; that the warehouseman service must be actually given after the reasonable time for removal has expired; that when goods arrive at destination and are held in a vessel, car, depot, or place of delivery they are still receiving transportation service; (2) that such a holding of property is a part of the service that must be rendered in connection with the delivery, and is performed by the carrier as a common-carrier service; (3) that to restrict the carrier's liability to that of a warehouseman, only, when it does not render such a service would deprive the shipper of the benefit of the liability which the character of the service requires and would be a penalty of unnecessary and unreasonable severity for the failure to remove property at the expiration of 48 hours, failure for which the demurrage rules already provide a sufficient penalty; (4) that until the property is received or until such time as it should reasonably be removed, the shipper is entitled to demand that the carrier shall exercise the same diligence and be responsible to the same extent for property in its possession. (5) It is not claimed that the carrier should be held to the liability of a common carrier for goods in its possession awaiting delivery indefinitely. The shippers express no opinion as to what would be a reasonable time during which the carrier might be required to continue its high degree of liability, but say merely that the law now prescribes that at the lapse of a reasonable time for the removal of the goods the carrier's responsibility as a common carrier ceases and it becomes liable as a warehouseman only; that what constitutes a reasonable time must be determined from all the circumstances and conditions affecting each particular shipment; that it is impossible to fix an arbitrary time to take the place of the reasonable time prescribed by law without resulting in many cases of individual hardship.

"These arguments are apparently based upon a construction of the terminology of section 1 of the act to regulate commerce and of two decisions of the Supreme Court of the United States touching the carrier's liability in respect of goods remaining in its custody after arrival.

"In *Cleveland & St. Louis Ry. v. Dettlebach*, 239 U. S., 588, the question, as stated by the court, was, 'Whether the limitation of liability (under which a shipment of household goods had been received and transported) may be deemed to have spent its force upon the completion of the carrier's service as such, or must be held to control, also, during the ensuing relation of warehouseman.' The lower court had held to the contrary, reasoning that the limitation of the amount of the carrier's liability provided for in the bill of lading inured only to the benefit of the carrier as such and that the consideration of a reduced rate which supported the transportation contract could not be carried over so as to operate as a limitation of the amount of the carrier's liability in its capacity of warehouseman, but the Supreme Court ruled that the shipment having been made under an express contract made for the purpose of interstate transportation, such a contract must be determined in the light of the act to regulate commerce.

"Discussing the language of section 1 of the act the court held that the term 'transportation' included all services of the carrier in connection with the shipment, including storage of goods after arrival at destination. The court said:

"From this and other provisions of the Hepburn act it is evident that Congress recognized that the duty of carriers to the public included the performance of a variety of services that, according to the theory of the common law, were separable from the carrier's service as carrier, and, in order to prevent overcharges and discriminations from being made under the pretext of performing such additional services, it enacted that so far as interstate carriers by rail were concerned the entire body of such services should be included together under the term 'transportation' and subjected to the provisions of the act respecting reasonable rates and the like.

"The court's decision related only to the question indicated, viz., whether the limitation of the amount of liability provided for in the bill of lading had 'spent its



force upon the completion of the carrier's service as such, or must be held to control, also, during the ensuing relation of warehouseman.' The decision has no bearing upon the question as to *when*, or under what circumstances, the liability of the carrier, as such, ceases and that of warehouseman begins.

"Shortly after this decision was rendered the case of the *Southern Ry. v. Prescott*, *supra*, came before the Supreme Court on error to the supreme court of the state of South Carolina. That case involved the liability of the carrier of an interstate shipment as warehouseman of the goods after their arrival at destination. One of the stipulations of the bill of lading, substantially the same as that which we are here considering, was that 'property not removed by the party entitled to receive it within 48 hours (exclusive of legal holidays) after notice of arrival' might be kept in car, depot, or warehouse, 'subject to reasonable charge for storage and carrier's liability as warehouseman only.' After arrival of the goods the consignee paid the entire freight charges and took away 4 of the 13 packages constituting the shipment. The company's agent consented that 9 packages might remain to meet the consignee's convenience in removal. Before they were called for the carrier's warehouse, with its contents, including the 9 undelivered packages, was destroyed by fire. The Supreme Court held that 'transportation' as defined in the act includes the service of the carrier as warehouseman and that the retention of the part of the shipment in question was a terminal service forming part of the transportation service in the sense of, and governed by, the act to regulate commerce and that the carrier was liable for negligence only.

"The duties of the carrier and the shipper in respect to the delivery of goods are reciprocal. The circumstances and conditions attending the delivery of freight at terminals in the large cities, and even from the depots of carriers in the smaller communities, are such that it is not only impossible for the shipper to anticipate the arrival of his goods and be there to receive them, but also it would be equally disadvantageous to the carriers, whose facilities for the receiving and handling of freight are so congested and inadequate in many communities that much time and thought on the part of transportation companies, public commissions, and regulatory bodies are being devoted to the solution or amelioration of such conditions.

"The common-law rule varies in this country, as we have seen, there being three different applications, each in different jurisdictions. It might be argued, therefore, that any order issued by this Commission would have the effect of changing the rule in one or more of these jurisdictions and would be beyond the authority of this Commission as being an attempted exercise of legislative functions not specifically delegated to it by Congress. We think no such question of our jurisdiction could be seriously raised upon the ground stated. Though perhaps mixed with the question of the common-law rule, it is primarily an administrative question. What we are really dealing with are certain rules, regulations, and practices of the carriers, viz., those upon which the question of the termination of the carrier's liability as such would cease under the law and its liability as a warehouseman would begin. The primary question is one of fact and as an administrative matter it is both desirable and proper, in order that unnecessary controversy may be avoided, that a reasonable rule should be adopted for the determination of this question. As a practical matter, it is not only essential that the shipper should have notice of the arrival of his goods, but that the carrier should place them in an accessible position to be received by him and removed. Until they are so placed and tendered for delivery it is obviously impossible for the consignee to receive and remove them and the carrier can not reasonably be relieved of its common-law liability until it has so placed or tendered the goods for delivery. If the consignee, or other party upon whom is the duty to receive the goods, does not remove them within a reasonable time thereafter, the carrier's common-law liability should cease and become that of a warehouseman only. The consignee should have a reasonable time within which to remove the goods after notice has been duly received or given that they are *ready for delivery*, and the carrier's notice to the shipper should be one which not only notifies him of the arrival of the goods, but also that they are ready for delivery, or that, in the case of a carload shipment, the car has been placed at a designated place for delivery, or that the carrier awaits orders respecting its placement or delivery. This, in substance, is the common law and the established practice of the carriers even in those jurisdictions where, under the strict application of the Massachusetts and New Hampshire rules, they might not be required to give notice.

"It is not the question of notice, as such, in this clause with which we are here concerned, for the carriers' proposal includes the giving of notice. The question is of the propriety and reasonableness of the proposal to reduce the high degree of carrier liability to that of a warehouseman; that is to say, to liability for negligence only, for loss or damage caused by fire after 48 hours (exclusive of Sundays and legal holidays) *after notice has been sent or given*. There can be no reasonable division, as between the carrier and the shipper, of the carrier's liability for the goods while they are in its custody and until it has fulfilled its duty of delivery or, by reason of the consignee's neglect or failure, has, after reasonable efforts so to do, been unable to make the delivery. It follows therefore that there is a conflict between the provisions of the bill of lading limiting the free time to 48 hours after tender of delivery or notice that the shipment is ready for delivery, if the tariffs applicable give the shipper a longer time within which to remove the goods before demurrage or storage begins. The consignee is within his legal rights if he avails himself of the full time allowed by the tariffs and the carrier can not be presumed to be released from its liability, as such, while the goods are continued in its custody and the shipper, in accordance with privileges specifically accorded under duly published and filed tariffs, incurs no penalties.

"We find that the provision in the proposed uniform bill of lading is open to the objection made by some of the shippers, to-wit. that it makes the carrier's liability



dependent upon the sending or giving of notice of arrival, and not upon a delivery, or tender of delivery. We think this objection should be removed, and that the clause should be amplified and changed to read as follows:

"The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of property upon consignee's order, has been made.

"Section 1, clause 4, *liability of carrier for property while stopped and held in transit*.—The present uniform bill provides that:

"Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request or resulting from a defect or vice in the property, or from riots or strikes, or for country damage to cotton.

"The carriers desire to retain this provision in the proposed bill, but it is objected to by some of the shippers. The grounds upon which the carriers contend for this provision are: (1) That transit is a privilege carried in many tariff publications and that generally no extra charge is made for such service; (2) that it is granted upon condition that the carrier shall be relieved from liability as an insurer while the property is so held at the request of the owner; (3) that the property during that time is not within the full control of the carrier, but is held at a designated point under instructions from the shipper; (4) that the service is analogous to that of a warehouseman and the liability should be that of a warehouseman; (5) that the Commission is not empowered to extend the carrier's liability; (6) that shipments are held in transit frequently for a considerable length of time in cars and warehouses of the carriers; (7) that for so valuable a privilege held out by the bill of lading the carriers would be entitled to additional compensation for the liability assumed; (8) that in the absence of limitation in the contract the carrier's liability is that of a warehouseman only.

"The shippers contend against the retention of this provision on the grounds: (1) That the stoppage in transit is a part of the service for which the transportation charge is made, or, as is often the case, for which an additional charge is made, and that if loss or damage occurs while the owner of the property is availing himself of a lawful provision of the tariff and the carrier is actually in possession of the property it can not absolve itself from liability; (2) that the property held in transit is still the subject of transportation and is subject to the same possibilities of loss or damage as though it were in course of actual movement or held in the yards awaiting switching movement.

"No substantial evidence was introduced by the parties bearing upon this issue. The carriers argue that when the shipper steps in and exercises dominion over the property while it is in transit he takes it out of the power of the carrier to complete the transportation and, accordingly, that it has been held by the courts that in such case the liability of the carrier is reduced to that of a warehouseman only. *St. L. A. & T. H. R. Co. v. Montgomery*, 39 Ill. 335; *McVeagh v. A., T. & S. F. R. Co.*, 3 N. Mex. 205; *Elliot on Railroads*, §1543; *Michie, Carriers*, §1091.

"They contend that stoppage *in transitu* is of value to the shipper, not only in cases of insolvency of the consignee, but very materially so in cases of diversion to meet different and advancing markets, and in a great many other ways; that for these reasons it is very largely taken advantage of by the shipper; that since it is such a service as is asked for by the shipper and granted by the carrier, it follows; first, that it should be specified; second, that it is both proper and right that the carrier should be permitted to specify its liability in connection with such a service.

"In behalf of the shippers it is contended in a brief filed by the National Industrial Traffic League that 'property held in transit is still the subject of transportation and as such is subject to the Carmack and Cummins amendments.'

"It is unnecessary for the purposes of this case to inquire into the principles upon which the legal right of stoppage *in transitu* rests. We are more particularly concerned with its development into the various forms of transit services which in the modern development or extension of transportation services have come to be quite generally accorded to shippers under other circumstances and upon other grounds than those upon which the purely legal right of stoppage *in transitu* rests. Under modern practice the owner of goods may usually direct the carrier to stop his goods in transit; he may then reconsign them to another consignee; take delivery of them at a point intermediate to the original destination; order them diverted to a different destination, or returned to the original point of shipment. Such control over their property during transportation is freely exercised by shippers in this country and, where regularly done in accordance with commercial customs and practices, is customarily provided for by carriers in their tariffs. Sometimes the service is included in the stated rate or charge for transportation; in other instances an additional charge is made.

"We have already discussed the question of the termination of the carrier's liability as an insurer of the goods after arrival at destination, and we have seen that such liability does not attach until property has been delivered to it for immediate transportation. When goods are merely delivered to a carrier or deposited in its warehouse and are not to be transported until further orders from the owner, the carrier's liability is that of a warehouseman or bailee only. *Wilson v. International Ry. Co.*, 160 N. Y. 367; *Louisville & Nashville R. R. Co. v. The U. S.*, 39 Ct. Cl. 405. The circumstances are somewhat different, however, when goods are held at an intermediate point because of interrupted transportation. As has been said with respect



to the liability of the carrier as a warehouseman of goods while they are in transit: The owner loses sight of his goods when he delivers them to the first carrier and has no means of learning their whereabouts until he or the consignee is informed of their arrival at destination. At each successive point of transfer from one carrier to another they are liable to be placed in warehouses, or to be delayed by the accumulation of freight or other causes and exposed to loss by fire or theft. Superadded to these risks are the dangers of loss by collusion, quite as imminent while the goods are thus stored at some point unknown to the owner as while they are in actual transit. As a general rule, the storing of the goods under such circumstances should be held to be a mere incident to the transportation, and they should be under the protection of the rule which makes the carrier liable as an insured from the time the owner transfers their possession to the first carrier until they are delivered to him at the end of the route. *McDonald v. The Railroad*, 34 N. Y. 497; see also *Lewis v. Chesapeake & O. Ry. Co.*, 47 W. Va. 656; *Southard v. Minneapolis, St. P. & S. S. M. Ry. Co.*, 60 Minn. 382.

"It is otherwise, however, when the holding is at the instance of the owner of the goods and in the exercise of a right on his part, for then the carrier is placed in a different position with respect to the goods, and the circumstances of the case may divest the carrier of the high degree of responsibility which rests upon it while the goods are in its possession and in course of transportation. Under these circumstances the carrier, it is true, still has the goods in its custody, but the transportation which has been interrupted and interfered with by the owner can not be continued until further orders have been received from the owner. The carrier's function as a transportation agent is suspended for an indefinite, and often a long, period of time. 'Thus where the goods have been delivered to the railroad company for shipment, and they were loaded upon its cars for that purpose and were about to be started, but the company was then requested by the owner to wait until he could see the party to whom he had sold them, which request was complied with; and the next day the goods, while being so detained, caught fire and were damaged, it was held that from the moment the request was made to detain the goods the liability of the company was as a warehouseman only.' *1 Hutch. Carr.* (3rd Ed.), § 113; *St. L., A. & T. H. R. R. Co. v. Montgomery*, *supra*.

"The same principle, it would seem, should apply when, upon orders of the owner, property is stopped and held in transit pending further orders from the owner. The holding at the owner's order is not accessory to the transportation. The precise point at which the goods may be stopped and held, that is, whether in terminal yards or warehouses of the carrier, or at an intermediate point on the line of transportation, is immaterial.

"From our study of the question we think that even in the absence of express stipulation the carrier's liability, under the circumstances contemplated, would be that of warehouseman, only, while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request.

"Although the matter is not brought in issue, we are not satisfied with the carrier's claim of exception, which is included in this clause, from loss, damage, or delay on account of strikes or riots. We are of the opinion and find that this provision should be amended so as to provide that carriers shall not be liable for 'delay caused by riots or strikes,' as thus modified we think that the condition proposed by the carriers would be in accord with the law and just and reasonable.

"We conclude, therefore, that the stipulation proposed by the carriers is in accord with the law and is just and reasonable. It is therefore approved.

"Section 1, clause 5, transportation in open cars.—In section 1 of the present uniform and standard forms of bills of lading it is provided that—

"When in accordance with general custom on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be upon the carrier or party in possession.

"The carriers desire to retain this provision in the proposed uniform bill, but the shippers object and offer the following as a substitute:

"Property not customarily transported in open cars, when transported in open cars at the request of the shipper, shall be at the owner's risk as to loss or damage resulting from the use of such open car, provided such loss or damage could not have been prevented by reasonable care by the carrier or party in possession; provided further, however, that in the case of loss thereof or damage thereto by fire, the liability of the carrier or party in possession shall be the same as if the property had been carried in a closed car, and the burden to prove that the carrier exercised reasonable care shall be upon the carrier.

"It is the custom to transport in open cars certain low-grade commodities and heavy or bulky articles, such as ore, coal, sand, stone, logs, lumber, machinery, engines, agricultural implements, including separators, traction engines, lumber products, poles, street cars, structural and other classes of steel, etc. Detachable parts are frequently included with machinery, engines, etc. More recently, because of the general shortage of equipment, automobiles have been extensively carried in open cars.

"The reasons advanced by the carriers in support of the retention of this provision are: (1) that the use of open cars is largely for the convenience of the shipper or consignee; (2) that they are often used to reduce the cost of handling the freight (the shipper usually loading and the consignee usually unloading carload shipments), as well as for the shipment of articles too large or bulky to be loaded into box cars; (3) that there is an additional hazard, and that the carriers have great difficulty in policing the transportation in open cars of property that offers opportunities for pilferage, or is likely to be damaged by weather, or which is peculiarly susceptible to



loss or damage to detachable parts that the shipper could remove and thus protect himself, but which he will not ordinarily remove if the carrier can be held liable for the damage.

"It is contended on the part of the carriers that the provision in dispute has been long in effect; that it is not affected by recent legislative enactments and that there has been no evidence offered to show that the rule has worked any embarrassment or injustice, and that there is no reason to believe that in the future, any more than in the past, any shipping interest will suffer by the retention of the open-car provision in the bill of lading.

"The shippers object to the language of the provision as it reads at present because they say; (1) that the practical effect is to restrict the carrier's liability for all goods carried in open cars to loss or damage by negligence only; (2) that property that is customarily transported in open cars is of such a nature as to be largely free from loss or damage, but when such loss or damage does occur it would ordinarily not be due to the use of open cars, and that the carrier should be subject to the same liability with respect thereto as it assumes with respect to property transported in closed cars; that to put the risk of loss or damage, not directly attributable to open cars, on the shippers would be to impose an unjust burden; (3) that it is the duty of the carrier to transport property that is not ordinarily transported in open cars and that it should be required to assume the liability; (4) that there is no reason for excusing the carrier from liability for loss or damage to goods transported in open cars when such loss or damage to goods transported in open cars when such loss or damage is not caused by the fact that an open car was used; that in any event, if property in open cars is to be shipped under a restricted liability, there should be a direct relation between the use of the open car and the loss or damage from which the carrier is to be exempted.

"The shippers are willing to assent to a limitation of the carrier's liability when property not customarily transported in open cars is, at their request, so transported and loss or damage occurs as the direct result of the use of open cars. It is obvious, however, that a limitation so phrased might ultimately become inoperative because goods which are not now customarily transported in open cars might in the course of time, and as the result of changed conditions, come to be customarily so transported.

"With respect to the evidential facts and conditions, it is to be observed that certain kinds of goods may, and of necessity must, be transported in open cars. Carriers commonly hold themselves out to transport such goods, and they must therefore receive and transport them when offered for shipment. In the absence of statutory prohibition, it seems, the carrier may stipulate for a limitation of its liability in receipt of goods so transported except, of course, that it can make no stipulation for exemption on account of loss or damage caused by its own negligence, 2 *Hutch. Carr.* (3d Ed.), § 506, and under the law, when a consignor of goods agrees that they may be loaded and transported in open cars, the carrier, in the absence of negligence on its part, is not liable for any damage caused to the goods by their being so loaded and transported. *Western A. R. Co. v. Exposition Cotton Mills*, 81 Ga. 522. But the carrier must exercise ordinary care and diligence even when the shipper agrees to or requests the transportation in open cars. *C., St. L. & N. O. R. Co. v. Moss*, 60 Miss. 1003; *Michie, Carriers*, § 1020.

"We are of opinion that the exemption stipulated for in the present and proposed bill is too broad and too greatly favors the carrier to be entirely just and reasonable. Moreover, we think that it falls within the provisions of the Cummins amendment so far as it seeks to exempt the carrier from the liabilities with which it would be charged under the common law. To that extent it would be invalid and void. To the extent that the carrier would escape liability at common law stipulation is unnecessary. We shall therefore not approve either the rule proposed by the carriers or the substitute offered by the shippers for inclusion among the conditions.

"Section 2, clause 3, measure of carrier's liability for loss or damage.—In the uniform bill of lading approved by the Commission in its report *In the Matter of Bills of Lading, supra*, there was contained the following provision, which then constituted paragraph 2 of section of the conditions:

"The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

"One of the questions considered by the Commission in its report in *The Cummins Amendment, supra*, was thus stated:

"May the carriers lawfully provide in their tariffs and rate schedules that their liability shall be for the full value of the property at the time and place of shipment?

"Upon this question the Commission said:

"It is urged that this rule would relieve the question of the amount of liability from uncertainty, would afford a reasonable and uniform method of determining the measure of recovery, save endless litigation with its attendant labor and expense, and avoid unjust discriminations.

"The Cummins amendment clearly places upon the carriers liability for the full actual loss, damage, or injury to the property transported which is caused by them, and it makes unlawful any limitation of that liability, or of the amount of recovery thereunder, in any receipt, bill of lading, contract, rule, regulation, or tariff filed with this Commission, without respect to the manner or form in which such limitation is sought to be made. The loss or damage must, apparently, be either as of the time and place of shipment, time and place of loss or damage, or time and place of destination. Where rates are lawfully dependent upon declared values, the property and the rates are classified according to the character of the property, of which the value of the property may constitute an element, and such classification is necessarily as of the time and place of shipment. It is therefore believed that the liability of the carrier may be



limited to the full value of the property so classified and established as of the time and place of shipment.

"Upon brief in the instant case the carriers say:

"The carriers thereupon assumed that they were entitled to provide that liability should be determined with respect to the value of the property at the place and time of shipment, and the uniform bill of lading was amended so as to read:

"The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property at the place and time of shipment under this bill of lading, including the freight charges, if paid."

"The carriers now propose, as clause 3 of section 2 of the proposed conditions, the following amended provision:

"The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the actual value of the property at the place and time of shipment under this bill of lading, including the freight charges, if paid; and where the actual value of the property has not been required to be specifically stated by the shipper in this bill of lading, such actual value shall be arrived at from the bona fide invoice price, if any to the consignee.

"The shippers object to this proposed language and propose the following:

"The amount of any loss or damage to property, or loss or damage due to delay in the delivery thereof under this bill of lading for which the carrier is liable by law, shall be the full actual loss, damage, or injury, including freight charges, if paid.

"While the rigor of the first Cummins amendment, which the Commission had under consideration in *The Cummins Amendment, supra*, was modified by the second amendment, it is still necessary to note that by the terms of the latter the right of the carrier to restrict its liability for loss, damage, or injury caused by it or its connections to the goods transported was revived, or restored, and made lawful *only* as 'to property, except ordinary live stock, received for transportation concerning which the carriers shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property \* \* \*. As to ordinary live stock and all other property not falling within the exceptions stated, it seems clear that the strict prohibitions of the first Cummins amendment still apply, and any such limitation of liability or limitation of the amount of recovery without respect to the manner or form in which it is sought to be made is unlawful and void.

"It is true that the Commission in its report *In the Matter of Bills of Lading, supra*, approved a rule similar to the one now in effect, and which the carriers wish to retain. Such a rule was lawful, however, as of the time of that action and down to the time when the first Cummins amendment was enacted. There is no warrant for the broad construction which counsel for respondents in the instant case now seek to put upon the language of the Commission in its report in *The Cummins Amendment, supra*. When closely read, it will be observed that the Commission did not give an unqualified affirmative answer to the question categorically stated (page 693). What the Commission did say was that 'where rates are lawfully dependent upon declared values, the property and the rates are classified according to the character of the property, of which the value of the property may constitute an element, and such classification is necessarily as of the time and place of shipment.' It is, therefore, believed that the liability of the carrier may be limited to the value of the property *so classified* and established as of the time and place of shipment.

"To sum up what has been said upon the subject of the limitation of the carrier's liability for loss, damage, or injury caused by it or its connections, property received for transportation by carriers subject to the act may, for the purpose of testing the application of the first and second Cummins amendments, as we construe them, be divided into three classes: (1) Ordinary live stock, which by specific exclusion from the application of the second Cummins amendment is still subject to the first Cummins amendment prohibiting any limitation whatsoever, of such liability; (2) property, other than ordinary live stock, in respect to which the carriers have not been authorized or directed, in accordance with the provisions of the second Cummins amendment to make rates dependent upon values declared in writing by the shipper or agreed upon in writing as the released value of the property, and which, therefore, remains subject to the provisions of the first Cummins amendment, and (3) property, other than ordinary live stock, as to which the carriers, under the provisions of the second Cummins amendment, have been authorized or directed to make rates dependent upon declared or agreed values, in which event the carrier's liability is automatically limited to values predetermined by the declaration or agreement, and as to which, therefore, no controversy can arise respecting the time and place of ascertaining the amount of the carrier's liability.

"The proposed rule stipulating that the measure of the carrier's liability shall be the value as of the time and place of shipment, even if valid, could have application only to property falling within classes 1 or 2 as above defined. The question is, therefore, whether the proposed stipulation as applied to such classes of property would be a limitation of liability or limitation of the amount of recovery and therefore unlawful and void. The shippers contend that it would. In the view that we take of the law, it is unnecessary to review the arguments of the parties at any length. The general rule of the common law is that the measure of damages for which the carrier is liable, in the absence of specific stipulations in relation thereto, is the market value of the goods at destination, plus interest on such value from the date when, in general course, the goods should have been delivered, less the unpaid transportation charges, if any. *Mobile & Montgomery R. Co. v. Jurey*, 111 U. S. 584; *O'Hanlon v. Ry. Co.*, 6 Best & C. 484; *Rodocanachi v. Milburn*, 18 Q. B. Div. 67. To the same general effect are cases decided by the various state courts. Compensation on this basis will generally make the owner whole in respect of his loss.



"The bill of lading provision here considered has come before the state courts for consideration in a number of cases. The decisions are not harmonious. It has been held that the rule is valid and reasonable. *Denver & R. G. R. Co. v. A. Peterson Grocery Co.*, 59 Colo. 125; *Matheson v. Southern Ry. Co.*, 79 S. C. 155; that its effect is not to limit or diminish the carrier's liability, but that it merely establishes a rule for determining the value of the property in case of loss. *Grubb v. Atlantic Coast Line R. Co.*, 101 S. C. 210.

"The most recent discussion of the question whether or not the proposed rule operates as a limitation of liability in contravention of the Cummins amendment is contained in *McCault-Dinsmore Co. v. Chicago, M. & St. P. Ry. Co.*, 252 Fed. 664, where the district court for Minnesota, citing the provisions of the statute, reasons thus:

"Under this language, is the provision or stipulation above referred to in the bill of lading unlawful and void? If it is an agreement as to value, which I think it is not, it is clearly so. The answer to the question must therefore be found in the answer to the further question: Was this a limitation of the liability of the carrier, or a limitation of the amount of recovery? And it seems to me the answer to this question is found in the answer to the further question: What would have been the liability of the carrier, and the consequent amount of recovery, if that provision or stipulation had not been in the bill of lading? In the latter case there can be no question, and it was so admitted on the argument, as it had to be, but that the liability and the consequent amount of the recovery would have been that of the common law, namely, the value of the goods at the point of destination at the time they should have been delivered; and that this is the actual loss to the shipper caused by the failure of the carrier to deliver the goods at that time and place, whether the value is greater or less than at the time and place of shipment, is the foundation of the common-law rule.

"From the foregoing simple statement, I do not see how it is possible to escape the conclusion, upon a fair and open-minded consideration of the language of the amendment and the obvious and well-known meaning of its terms, that this provision or stipulation in the bill of lading is a limitation of the liability of the carrier and of the amount of recovery, and is therefore unlawful and void.

"The proposed rule, being superfluous so far as concerns the transportation of property shipped under rates dependent upon declared or agreed values, and unlawful and void in respect of all other property, we condemn it and direct its complete elimination from the proposed bill. This will involve a slight modification of the context immediately following the phraseology eliminated as indicated in the form prescribed by the Commission (Appendix B).

"Section 4 clause 1, general liability of carrier as warehouseman after 48 hours.—This clause is the third in the trio of provisions in the proposed conditions which seek to limit the carrier's liability to that of warehouseman while the property is still in its possession. (See discussion of section 1, clauses 3 and 4, *ante*.) The provision reads as follows:

"Property not removed by the party entitled to receive it within 48 hours (exclusive of Sundays and legal holidays), after notice of its arrival has been duly sent or given, may be kept in vessel, car, depot, or place of delivery of the carrier or warehouse, subject to the tariff charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage. Nothing in this paragraph shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage. Similar or identical provisions have for several years been incorporated in the uniform and standard forms of bills of lading. The carriers wish to retain it, but the shippers propose that the provision be eliminated without substitution:

"Upon analysis, it will be observed that the provision contains three distinct propositions: (1) That, subject to different provisions of local rules or law, the free time for delivery or removal of property shall be limited to 48 hours after notice of arrival has been duly sent or given; (2) that after the expiration of that time the property may be kept in vessel, car, depot, or place of delivery of the carrier or warehouse, etc., subject to established charges for storage and liability of the carriers as warehouseman only; or, (3) may, at the option of the carrier, be stored in a public or licensed warehouse at the place of delivery or other available place at the owner's risk and cost, and without liability on the part of the carrier, and subject to a lien for freight and other lawful charges, including storage.

"With respect to the first proposition, it is scarcely necessary to do more than direct attention to the nature of the criticism against the somewhat similar provision of section 1, clause 3, considered in a prior part of this report, respecting the carrier's proposal to limit the liability to that of a warehouseman 'after 48 hours \* \* \* after notice of the arrival of the property at destination has been duly sent or given.' The same considerations which have seemed to us to require a modification of the phraseology of that rule apply here as well, viz., the consignee should have the benefit of the 48 hours free time after tender of the property for delivery, or, in the case of a carload shipment, after notice that the car has been *actually placed* at the accustomed place of delivery or is held subject to the owner's orders for disposition, and subject, moreover, to any provisions of lawfully filed tariffs that may permit a longer time in individual cases, or with respect to particular commodities.

"So, in respect to the proposition to reduce the carrier's liability to that of a warehouseman only, after tender, or reasonable effort to effect delivery of the property has been made by the carrier, the fundamental governing principles which have been considered in connection with the provision in section 1, clause 3, discussed, *ante*, control here.

"One particular objection to the clause here considered is laid against the phraseology of the provision that in the event of non-delivery after specified time the property may, at the option of the carrier, be stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, 'and there held at the owner's risk and,' etc. It is urged in behalf of some of the shippers that if the



entire paragraph is not eliminated that at least the words 'at the owner's risk and' should be eliminated, leaving the wording to read 'and there held without liability on the part of the carrier.' It is urged that this be done because there is at least a possibility that it might be held, under the terms of the provision, that the public or licensed warehouse in which the goods are stored incurs no liability whatsoever, even as a warehouseman, although its regular storage rates are being paid by the shipper or consignee.

"We think this objection is well taken. As stated upon brief by the shippers, 'clearly the purpose of the phrase above quoted is only to relieve the carrier from liability where the goods are sent to a public or licensed warehouse, and there is obviously no reason why the carrier should include in its bill of lading a phrase which may be construed as relieving the public or licensed warehouse from any responsibility whatsoever for the safe-keeping of the goods.'

"The rule can not be approved in the form proposed by the carriers. In lieu thereof, we are of the opinion that a rule phrased as follows would be just and reasonable:

"Property not removed by the party entitled to receive it within the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or, at the option of the carrier, may be stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

"Section 4, clause 9, receipt or delivery of property at private or other sidings wharves, landings, etc.—Section 5 of the present uniform bill of lading provides:

"Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at the risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at the owner's risk until the cars are attached to and after they are detached from trains.

"A similar provision at present incorporated in the revised standard form of bill of lading and constituting clause 9 of section 4 of the proposed bill, reads as follows:

"Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at the risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and, *except in case of carrier's negligence, when received from or delivered on private or other sidings or on such wharves or landings shall be at owner's risk until the cars are attached to and after they are detached from trains or unloaded into and after unloaded from vessel.*

"The shippers propose the elimination without substitution of that portion of the clause printed in italics above.

"The practical effect of that part of this provision to which objection is made is to relieve the carrier of all liability, except for its own negligence (for which it would be liable in any event), for loss, damage, or injury caused by it or by any connecting carrier, to property received from or delivered on private or other sidings, wharves, or landings, occurring at any time when the property is not in a car actually attached to a train or actually in or on a vessel.

"The carriers refer to the fact that a similar provision has long been carried in the uniform bill of lading and ask consideration of the testimony of their traffic and claim officers, 'with the hope that it may be found possible to dispose of the matter so as to conserve all interests.' Evidently this precatory expression is prompted by the disposition of some of the shippers, evidenced during the course of the hearing, to accept a compromise provision. The carriers do not argue the question upon brief, but content themselves with the observation that some of the shippers seem to admit, by inference, that there are some sidings, other than private sidings, on which full common-carrier liability should not be imposed, and contend that there are almost numberless situations where all that can be required of carriers, with respect to property on sidings other than private sidings, is the exercise of ordinary care.

"The shippers contend that this provision is not only unreasonable, but that it is in open violation of the law; that by their attempt thus to limit their liability to that for negligence only, the carriers openly seek to do that which under the law they may not and can not do. Carload freight, when not received and delivered through the carrier's freight or warehouses or upon its docks, is commonly handled upon public team tracks of the carrier or private sidings of the shipper or consignee. It is urged that if a common carrier could limit its liability as proposed, it would, in effect, be liable as a common carrier only in respect of goods received at or delivered from its freight houses.

"The carriers' proposal must be considered in the light of actual conditions and general practices obtaining where property is received and delivered at private or other sidings, and of the reasonableness and lawfulness of the proposed limitation. At almost every point in this country where freight is received and delivered, carriers have so-called public team tracks at which carload freight is handled. They are owned by the carriers and are therefore comprehended within the phraseology, 'other sidings,' as used in the proposed clause in distinguishing them from private sidings owned or controlled by the shippers. Warehouses, elevators, mills, and other industries of shippers are often located upon side or spur tracks connecting with the carriers' main tracks. These side or spur tracks, generally devoted to the exclusive use of one or a few shippers, may be located upon the carriers' rights of way and owned by them, or they may be privately owned by the shippers. The circumstances and conditions of the use of these private tracks are generally similar to those of public team tracks,



except, as stated, the use of the private tracks is generally restricted to one or a few shippers, and is not open to the general public. Public team tracks are indisputably part of the carriers' facilities for the receipt and delivery of freight. They are extensions of its terminal facilities and so, it seems, are private industrial tracks or spurs under certain conditions. *Los Angeles Switching Case*, 234 U. S. 294.

"In the absence of statutory prohibition, the carriers might doubtless contract for limitation of their liability as proposed, but the shippers contend that it is unreasonable and unjustly discriminatory. Upon brief they urge:

"The shipper whose freight is received or delivered upon a siding pays the same rate as the shipper whose freight is received or delivered through the freight house. For the latter the carrier assumes liability from the time of delivery by the shipper to the carrier until the time of delivery by the carrier to the consignee; for the former the carrier now proposes to limit his liability and give to the shipper whose freight is received or delivered on sidings a lesser service and assume a lesser liability than is given to and assumed for the shipper whose freight is received and delivered through the freight house. But to both the same rate is charged. Such a situation would create an unjust discrimination against the shipper whose freight is either received or delivered upon a siding. That shipper is entitled to the same degree of liability upon the part of the carrier as other shippers paying the same rate."

"The condition proposed by the carriers is also unreasonable. As pointed out above the property in detached cars after delivery by the shipper or before delivery by the carrier is in the full possession of the carrier. The carrier's duty toward the property does not cease with the breaking up of trains and it begins before trains are assembled. During the entire course of transportation, which begins with the delivery of the shipment by the loading of it into the car and ends with the delivery of the property by unloading it from the car, the carrier's liability should continue. The shippers have a right to demand such liability and the carriers have no reasonable ground for restricting it.

"The carriers' proposal does not directly involve any of the mixed questions of law and fact as to when property has been delivered to a carrier and its liability as such begins. It is, in effect, a proposal to limit or defer the attachment of that degree of liability until the property, after having been received for transportation, and after having come into the custody and under the absolute dominion of the carrier, shall have come into a certain condition or position incidental to the actual transportation, i. e., until it is loaded into a vessel, or until the car in which it is loaded shall have been attached to a train.

"So, in respect of shipments transported by a carrier for delivery to a consignee at destination, the proposal would terminate the carrier's liability, as such, even more abruptly and under even less justifiable circumstances than were discussed in a prior part of this report, in connection with the proposal in clause 3 of section 1, to limit the carrier's liability to that of warehouseman after 48 hours after notice of arrival of the property at destination had been duly sent or given. We say more abruptly because, under the proposal we are here considering, the carrier's liability would apparently be terminated as soon as a shipment had arrived and been set out of the train in the yards at the destination terminal—even before the giving of notice to the consignee.

"Then, again, the shipper or consignee would apparently have to assume the risk even though, under the carrier's tariff, it might be entitled to 48 hours or more to remove or unload the property after the receipt of notice of arrival. Indeed, it is not clear how the proposal we are here considering can be reconciled with some of the other proposals of the carriers that we have heretofore considered and discussed, relative to the transition of the carrier's liability from that of an insurer to warehouseman. The liability of a railroad company as a common carrier continues after the arrival of the goods in a freight yard at the city of their destination until they have been placed at the disposal of the consignee, though the bill of lading provides that the carrier shall not be liable after the arrival of the goods at their destination. *Liverpool & L. & G. Ins. Co. v. McNeill*, 89 Fed. 131. Notwithstanding such a provision in the bill of lading, public policy has been held to so modify the contract as to give the consignee a reasonable time within which to remove the goods after arrival before the carrier's liability as such ceases. *Tallassee Falls Mfg. Co. v. Western Ry. of Alabama*, 128 Ala. 167.

"It seems scarcely necessary to discuss the merits of this proposed limitation further, nor, in the view that we take of the matter, is it necessary to consider whether or not it would be in violation of the Cummins amendment. We think the proposal indefensible. The law affords sufficient protection to the carrier in the almost numberless variety of circumstances in which the application of such a limitation in the bill of lading might be invoked. We therefore find that the proposal expressed in italics is and would be unreasonable and should be omitted.

"Section 4, proposed new provision for notice to consignor and consignee in case of loss resulting in nondelivery and to the consignor in the case of goods refused or unclaimed at destination.—The shippers propose the incorporation in section 4 of the bill of lading of a new rule providing for notice to the consignor and consignee in case of loss resulting in nondelivery of the property, and to the consignor when shipments are refused or unclaimed at destination. The proposed clause reads as follows:

"Where the said property provided for in this bill of lading is lost or destroyed, resulting in nondelivery of the shipment, the carrier or party in possession shall immediately give notice thereof both to consignor and the consignee. If the property covered by this bill of lading is plainly marked with the name and address of the consignor, or if the carrier's agent at destination has otherwise specific notice thereof in writing, and such property is refused or unclaimed at destination, the carrier or party in possession thereof shall send notice of such refusal or nonclaim to the consignor within such time and by such means as may, in the circumstances, be reasonable.

"The shippers advocate the incorporation of such a provision in the proposed bill, because, they say: (1) The observation of such a practice will tend to reduce losses to the shipping public; will obviate the necessity of tracing shipments, and diminish the number of claims; (2) that the proposed provision would be reasonable and requires merely the exercise of due diligence; (3) that it would work no hardship on the carriers,



because the consignor could, as a practical matter, be notified only where he had taken the precaution to insure its being done or where the billing plainly indicated the name and address of the consignor; (4) that a similar rule was required to be established by the express companies and is to-day incorporated in the standard express receipt; (5) that a rule providing for notice to the consignor in case of loss or destruction of the property making delivery impossible would be reasonable, because in such a case knowledge of the fact would be solely in possession of the carrier and prompt notice to the consignor would frequently enable the shipper to minimize his loss and enable him promptly to comply with his contract by replacing the goods; (6) that a rule providing for notice to the consignor in case of goods refused or unclaimed at destination would often prevent the accrual of demurrage and storage charges which might amount to more than any profit that could be expected from the sale of the goods; moreover, the latter may deteriorate or the market price decline; (7) that what all parties should seek to do is to prescribe the best method, both for the carrier and the shipper, that will expedite the transportation of property and limit or lessen the loss to any parties connected with the transaction; (8) that it is now almost a uniform practice for carriers to give notice, substantially as provided for in the clause suggested, and since it is to that extent now regarded by the carriers as good business practice it ought to be made obligatory.

"The shippers point out that provisions of the bill of lading already agreed upon provide for notice to the consignor when nonperishable property is refused or unclaimed at destination, but that under this rule the notice to the consignor is one of intention to sell the property for charges after a certain length of time and that it is not given promptly or within reasonable time; that the rules already agreed upon provide that where perishable property is refused at destination, or the consignee fails to receive it promptly, the carrier may, in its discretion, to prevent further deterioration, sell the same to the best advantage at private or public sale, and that if there is sufficient time be sent to the consignor, in order that he may give disposition orders, if possible, but, the shippers insist, such notice will be sent to the consignor whether or not there is sufficient time to receive a reply giving such orders.

"The shippers explain that the provision that notice may be given 'within such time and by such means as may, in the circumstances, be reasonable' means that the carrier shall be expected to make use of the telegraph in case of nondelivery of perishable property, which in many cases might make it practicable for the shipper to give, and the carrier to receive, disposition orders. They say, however, that the carrier should of course, in any event, be permitted to make disposition of perishable property, if necessary, without awaiting disposition orders.

"The carriers seem to be disposed to dispute not so much the desirability of the end sought to be attained by the rule as the propriety of giving it, as they say, a 'bill of lading status.' Their testimony is to the effect that they are now exerting themselves to give notice to the consignor of property when it is lost or destroyed in a wreck, or when it is refused or unclaimed at destination. They contend, however, that in the case of lost or astray shipments, it would be impracticable to give immediate notice to the consignor, because frequently shipments are mislaid or delayed in transit or go astray and subsequently turn up. Under the operation of Freight Claim Association rules carriers diligently seek to trace lost or astray shipments and to give notice to the shipper or consignee, or both, as speedily as it is practicable to do. They refer, upon brief, to a statement in an opinion of the Supreme Court in *Georgia, Fla. & Ala. Ry. v. Blish*, 241 U. S. 190, as aptly depicting the circumstances under which carriers necessarily operate, viz., that 'the transactions of a railroad company are multitudinous and are carried on through numerous employees of various grades. Ordinarily the managing officers, and those responsible for the settlement and contest of claims, would be without actual knowledge of the facts of a particular transaction.' The carriers also cite the case of *Kehoe & Co. v. N. O. & St. L. Ry. Co.*, 14 I. C. C. 555, as one in which the Commission, having under consideration a claim by the complainant that the delivering carrier should telegraph the consignor in the event of a shipment refused by consignee, or which could not be delivered because the consignee could not be found, declined to impose upon the carrier the duty of sending a telegraphic notice to the consignor.

"The proposed rule, which contemplates imposing upon the carrier two affirmative duties, viz: (1) notice in case of loss or destruction of property, (2) notice in case of refusal or failure of consignee to claim property at destination, has no bearing upon the degree of the carrier's liability, which is, dependent upon the circumstances heretofore discussed, either that of an insurer or warehouseman. There is no suggestion that the incorporation of the proposed rule in the bill of lading, or its omission therefrom, will either limit or enlarge the carrier's liability under the common law or the statute. The duty of railroads in respect to the delivery of property, it may be noted, is different from that of express companies. By custom, usage, and upon grounds of impracticability, the old common-law obligation of carriers to make personal delivery to the consignee is no longer applicable to railroads; it is different, however, with express companies which are, by general custom at least in cities and larger towns, obligated to make personal delivery within defined territorial limits.

"At common law, 'the duty to give notice to the consignor or owner of the goods, in case of their refusal by the consignee, or when he is absent or can not be found, can arise only when the carrier is required to make personal delivery or to give notice to the consignor of their arrival. It has no application to railroad companies when they are only required to deposit the goods in their warehouses to await the call of the consignee without notice to him. \* \* \* The failure as warehouseman to give such notice would not be such negligence as to make them liable in that character for any loss which might be thereby occasioned.' 2 *Hutch. Carr.* (3d Ed.), § 725, citing *Mer-*



*chants', etc., Co. v. Hallock*, 64 Ill. 284; *Weed v. Barney*, 45 N. Y. 344. But it is different, it seems, in jurisdictions where the giving of notice of arrival to the consignee is required, for there, according to what appears to be the better authority, the consignor should be notified. Under the Carmack amendment the initial carrier is liable for any loss or damage resulting from the failure of the final carrier to notify the consignee of the arrival of the goods at destination, and for its failure, on the consignee's refusing to accept them, to store the goods for the account of the shipper or to exercise proper care in holding them for him. *American Merchants' Union Exp. Co. v. Wolf*, 79 Ill. 430; *N. O. & St. L. Ry. Co. v. Dreyfuss-Well Co.*, 150 Ky. 333.

"We perceive many difficulties in the practical application of a hard and fast rule of the character proposed by the shippers. Goods frequently go astray for a long time, and afterwards turn up; packages are sometimes marked in such a careless manner as not to be readily identified with the description in the billing. In such cases, it would be practically impossible for the carrier to comply with the strict letter of the proposed rule to give *immediate* notice. The only circumstances in which the carrier could give immediate notice of loss or damage would seem to be, as testified to by carriers' witnesses, in case of wreck, and it is now the practice, at least of many of the carriers, to give such notice. With respect to the second sentence of the proposed rule, others in the bill of lading already agreed upon provide for notice in the manner and under the circumstances therein defined. Moreover, the carriers now have a general custom, as testimony shows, of giving notice to the consignor in the event the property is refused or not claimed at destination. It is a matter of knowledge to the Commission, that under the Freight Claim Association rules and practices, carriers have greatly improved their services in this respect. It is undoubtedly to the mutual interest of the carrier and shipper that such notices should be given, but we have no reason to believe that the carriers fail, in the general conduct of their business, to exercise due diligence and observe good business methods in respect to the giving of such notices. We see no reason, therefore, for incorporating a rule in the bill of lading of the character proposed and do not approve it.

"Section 7, clause 2, *liability for payment of freight charges*.—This clause in the proposed bill reads:

"The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carriers shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor shall not be liable for such charges.

"The parties are in agreement upon the phraseology of this section, except in respect to one part of it which appears to be regarded as important. The shippers propose that there be inserted in the bill, immediately following the words, 'face of this bill of lading,' the additional words, 'or in a written order of reconsignment.' The carriers earnestly object to the shippers' proposal.

"A primary right of the carrier in the conduct of its business is that of reasonable compensation for the service rendered by it, and it is entitled to assure itself of such compensation by demanding it in advance. In ordinary commercial practice, however, the carrier waives its right to prepayment of charges and looks to the consignee for the same, its claim being secured by a lien upon the goods. There is a presumption, when goods are transported without exaction of charges in advance, that the consignee is liable for the same as the owner of the goods and that the carrier may look to him for payment. This, however, is a rebuttable presumption. The consignor, being the one with whom the contract of transportation is made, is originally liable for the carrier's charges and unless he is specifically exempted by the provisions of the bill of lading, or unless the goods are received and transported under such circumstances as to clearly indicate an exemption for him, the carrier is entitled to look to the consignor for his charges. In order to secure exemption from liability for the freight charges in case the shipment is delivered to the consignee without the collection of such charges, the consignor is required to append his signature to the following statement in a space on the face of the bill of lading provided for that purpose: 'The carrier shall not make delivery of this shipment without payment of freight and other lawful charges.'

"The shipper's desire that the consignor's stipulation in the bill of lading for exemption from liability for freight charges be carried over to 'a written order of reconsignment' is based upon several reasons. It is urged, upon brief, that 'it often happens that upon reconsignment the new consignee will be one in whom the consignor does not have the same degree of confidence that he had in the original consignee.' It is urged, also, that when an order of reconsignment is made, the bill of lading accompanying the shipment must be located and changed and that 'when such change is made in the bill of lading it will require little additional effort to make the necessary notation to the effect that delivery shall not be made without requiring the payment of the charges.' It is further urged that to omit a provision of this kind from the bill of lading will prevent the shippers enjoying a large measure of the protection carried by section 7 against bills for overcharges or for freight charges not paid by parties who, at the time the freight was received, were amply able to pay the charges thereon.

"The carriers object to the insertion of this provision in the bill of lading upon the grounds—

that it is unreasonable to expect the carriers to attach to the very valuable privilege of reconsignment already sufficiently burdensome to them, an incident which would certainly produce complications and losses. In the first place, the provisions, if amended, could have but a partial and uncertain application to reconsigned shipments, inasmuch as shipments are so frequently reconsigned without a written order by the original consignor. It could not be given a general



application without a universal tariff prohibition of reconsignment in any instance whatever, except upon the actual written order of the consignor. In the second place, a carrier, touching the important matter of the payment and collection of freight charges—a matter which relates to the paramount purpose of the act to regulate commerce itself—should be permitted to rely upon the bill of lading issued when the transaction is initiated, and not compelled to observe instructions which would often be hastily and inaccurately transmitted while the shipment is en route. In the third place, it is much easier for a consignor to take the onus at the outset of determining whether he will assume and continue to bear the common-law liability for the payment of the freight charges, or the qualified liability which will accrue under the provision conceded by the carriers, than it is for a carrier to guard against the consequences of having an attempt made to change the liability status while the shipment is being transported.

"We do not regard the shippers' proposal favorably. Its effect would be to impose upon the carrier's additional risk and responsibility, not in respect of any common-law or statutory duty of transportation, but in respect of the security of compensation for its services. The end desired by the shippers has to do with the convenience and security of their oftentimes speculative and impromptu commercial transactions. The business of the carrier is to furnish transportation. Its legal obligations are confined to transportation and the duties incident thereto. It is not obligated to assume risks for the convenience of the consignor which have no direct relationship to its service of transportation.

"The Commission is not disposed to approve the laying upon carriers of duties or obligations extraneous to the service of transportation, except and unless to remove unlawful discriminations, and such are not shown to exist here. The suggestion of the shippers is, therefore, disapproved.

"Section 9, clauses 1, 2, 3, 4, 5, and 6, limitations of liability of water carriers.—Section 9 of the bill as proposed by the carriers, and as revised subsequently to the Washington conferences, reads as follows:

"(1) Except in case of diversion from rail to water route, which is provided for in section 2 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with statute or this section, and subject also to the conditions, except in the case of negligence on the part of the carrier or party in possession not provided by statute, that no such carrier or party in possession shall be liable for any loss or damage resulting from fire, or for any loss or damage resulting from the perils of the lakes, seas, or other waters; or from vermin, leakage, chafing, breakage, heat, cold, frost, wet, or change in weather, or by riots, strikes, stoppage of labor or threatened violence, or delay caused by stress of weather, or causes beyond the carriers control, explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenances, whether existing prior to, at the time of, or after sailing; or unseaworthiness; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. (2) And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall have the liberty to call at any port or ports, to tow and be towed to transfer, to transship, to lighter, to load and discharge goods at any time, and assist vessels in distress and to deviate for the purpose of saving life or property; for docking and for repairs. (3) Such water carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry such property upon deck.

"(4) If the shipowner shall have complied with the provisions of section 3 of the Harter act, it is hereby agreed that the owners or consignees of the cargo shall contribute with the shipowner in general average, and shall pay any salvage or special charges incurred, even though the necessity for the sacrifice or expenditure was brought about by fault in navigation or management of the ship.

"(5) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this bill of lading.

"(6) The term 'water carriage' in this section shall not be construed as including lightering across rivers or in lake or other harbors when performed by or on behalf of the rail carrier.

"Some of the shippers object to the incorporation in the bill of any conditions stipulating or defining exemptions of water carriers. They propose the elimination of clauses 1 to 5, inclusive, and, further, that clause 6 shall then be changed to read:

"The transportation of any property under the terms of this bill and by lighter, water, float, or car ferry, in or across rivers, harbors or lakes shall be deemed to be transportation by rail.

Various other substitute clauses are suggested by other shippers who do not unconditionally oppose the inclusion in the bill of any conditions relative to water carriage. The objections are predicated principally upon the proposition that water carriers are already permitted by specific enactments of Congress to limit their liability to such a liberal extent that further limitations should not be approved. Moreover, it is contended many of the limitations of their liability which the carriers seek to make through the incorporation in the bill of the clause quoted above would be in violation of the law and therefore null and void, and that the only possible effect to the shipper that could follow from their being printed in the bill would be to mislead the shipper and perhaps discourage or deter him from filing or insisting upon the payment of claims in which he might have a perfectly good cause of action.

"Congress has enacted numerous statutes affecting the rights and liabilities of water carriers. The principal acts under which, or in view of which, the proposed conditions are apparently put forth, are the so-called fire act of March 3, 1851, 9 Stat. L., 635; R. S., §§ 4282, 4283, which provides that the owner of a vessel shall not be liable for damage to goods caused by fire on such vessel 'unless such fire is caused by the design or neglect of such owner'; and releasing the owners of vessels from all damage in excess of the value of the ship, and the freight then pending, except either by 'privity or knowledge' on the part of the owners; and of the principal federal statute restricting the liability of water carriers, known as the Harter act, 27 Stat. L., 445; 2 Supp. R. S., 81.

"Conditions similar to those proposed have for some time been carried in the present uniform and revised standard forms of bills of lading. It frequently happens that a shipment moves by rail to a port, or place of transshipment by water, and is



routed beyond via the line of a water carrier to final destination. In such cases both the shipper and the consignee may be far distant from the point of such transfer from rail to ship, and in a great majority of such cases it is impracticable to secure a surrender of the railroad bill of lading at the point of transfer or to there make delivery to the consignee. As stated upon brief in behalf of the Pacific Coast Steamship Company—

the result has been that such shipments have been carried by the water carrier subject to the conditions; limitations of liability; provided by the rail carrier's bill of lading—this although the water carrier's rate for the shipment is that provided for a port to port transportation that is subject to the limitations of liability provided by its bills of lading for a strictly port to port transportation. That is, in such case the carrier assumes a greater liability for a shipment that so comes to it, from a rail carrier, than it does if the shipment originate at the point of such transfer.

"As the water carriers' port-to-port rates are adjusted upon the basis of the lesser liability provided by its bill of lading, one result is, in effect, that the local shipper is discriminated against.

"Section 1 of the act specifies:

"That the provisions of this act shall apply \* \* \* to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one state or territory of the United States or the District of Columbia, to any other state or territory of the United States or the District of Columbia, or from one place in a territory to another place in the same territory, or from any place in the United States to an adjacent foreign country, etc.

"By section 5 of the act, where the Commission has found that the operation by railroad, or other common carrier subject to the act, of any carrier by water not operating through the Panama Canal, is in the public interest and may be extended or continued beyond July 1, 1914, it is provided that:

"In every case of such extension the rates, schedules, and practices of such water carrier shall be filed with the Interstate Commerce Commission and shall be subject to the act to regulate commerce and all amendments thereto in the same manner and to the same extent as is the railroad or other common carrier controlling such water carrier or interested in any manner in its operation.

"By section 6 of the act it is further provided that:

"When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single state, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the act to regulate commerce, as amended June eighteenth, nineteen hundred and ten: \* \* \* (b) To establish through routes and maximum joint rates between and over such rail and water lines \* \* \*.

"These provisions of the act clearly bring water carriers within its operation and control when, and if, they participate in arrangements for continuous shipment and carriage.

"The Cummins amendment requires any common carrier, railroad, or transportation company subject to the provisions of the act, receiving property for transportation as defined therein, to issue a receipt or bill of lading therefor, and makes such carrier liable to the lawful holder thereof for the 'full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading,' etc. Many of the exemptions proposed to be incorporated in this section for the benefit of carriers by water would be in direct violation of the provisions of the Cummins amendment which we construe as applying to such carriers when used in connection with a rail carrier under a common control, management or arrangement for a continuous carriage or shipment. Carriers by water that are subject to the act, or that are willing to subject themselves to the act, by participating in the transportation of interstate traffic under arrangements with a railroad for through and continuous carriage and shipment of goods, must accept and be bound by the provisions of the act, including the provisions of the Cummins amendment, in respect to liabilities of carriers.

"The exemptions from liability which the respondents desire to incorporate into the bill of lading solely on behalf of carriers by water, when they participate in transportation subject to the act, might be proper in respect of transportation from port to port, or to transportation of such other character as does not fall within the Cummins amendment. With such transportation we have nothing to do, but it is our opinion that, as applied to the transportation by a water carrier under an arrangement with a railroad for common control and continuous carriage or shipment, the proposed rule would be in contravention of the Cummins amendment and therefore null and void.

"We can not approve its incorporation in the proposed uniform bill of lading.

## PART 2.—THE EXPORT BILL OF LADING.

### JURISDICTION OF THE COMMISSION.

"This proceeding, so far as it involves an inquiry relative to export bills of lading and questions appertaining thereto, presents, in some respects, an original field of investigation by the Commission, since no investigation directed specifically to that subject has been conducted heretofore by it. Questions relating to such bills have come incidentally before the Commission in other cases, but usually upon questions involving issues of undue preference or prejudice in the practices of the carriers.

"By reason of its peculiarities of form and substance the export bill stands somewhat apart from the domestic and live stock bills. The Commission has no authority to require of carriers the issuance, as such, of joint through export bills on traffic destined to nonadjacent foreign countries, because it has no authority or jurisdiction over the carriers from the port of export and could not prescribe the conditions to be written into a bill of lading covering the transportation by such carriers, which conditions, of course, constitute an essential part of the contract for through transportation; but, as was said in *Galveston Commercial Asso. v. A. T. & S. F. Ry. Co.*, 25 I. C. C. 216, this does not mean that the Commission may not, in a proper case, exercise its authority over the inland carrier to the port. While its authority over bills to nonadjacent foreign countries is, as already indicated, more limited and attaches more indirectly than in the case of bills covering domestic interstate traffic, or traffic to an adjacent foreign country, it nevertheless does have authority over the rules, regulations, and practices, of inland carriers subject to the act, when, and if, they join in through bills of lading to nonadjacent foreign countries, and it requires such rules and regulations to be published and filed. (Conference Ruling No. 378.)

"The transportation of traffic from an inland point to a port of export, for export, is subject to all the provisions of section 1 of the act. This is true even when the transportation to the port is performed wholly within the confines of the state in which it originates and whether the traffic be carried on local or on through bills of lading. *Red River Oil Co. v. T. & P. Ry. Co.*, 23 I. C. C. 438; *Texas & Pac. Ry. Co. v. Railroad Com'n of Louisiana*, 183 Fed., 1005; *So. Pac. Terminal Co. v. Int. Comm. Comm.*, 219 U. S., 498. Not all the provisions of the act, however, are applicable to export traffic. The Carmack amendment, as we have seen, applied only to transportation 'from a point in one state to a point in another state,' but the provisions of the Cummins amendments include 'transportation from a point in one state or territory or the District of Columbia to a point in another state, territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor.'

"The principal differences between the carriers and the shippers with respect to the terms and conditions which should, or should not, be incorporated in the export bill seem to arise (1) from the question whether or not the Carmack and Cummins amendments apply to traffic to a nonadjacent foreign country, (2) whether the rail carrier in delivering at its terminus, or at the end of its haul, may be treated as delivering to a consignee or his agent, or must be treated as delivering to a connecting carrier.

"The Cummins amendment is of comparatively recent enactment and our attention has not been directed to any judicial decisions in respect of its provisions that point the way to a determination of the question whether or not it applies to foreign commerce to a nonadjacent foreign country. On the other hand, the application of the Carmack amendment has been considered in a number of cases and it is in the light of these decisions that we must consider the similar questions relative to the effect and application of the Cummins amendment. In *Houston East & West Texas Ry. Co. v. Inman, Akers & Inman*, 63 Tex. Civ. App., 556, involving the question of the application of the Carmack amendment to a shipment of cotton from a point in Texas to a port in Germany, the court having occasion to consider the language of the amendment and to construe the meaning of the word 'state' held:

"This language is clear and unambiguous, and the prohibition against the right of a connecting carrier to limit its liability to loss or damage occurring on its own line is only applicable when the shipment is from 'a point in one state to a point in another state.' The use of this language excludes the idea that Congress intended to prohibit such contracts when the shipment was to a foreign country.

"The word 'state,' as used in the constitution of the United States, has been uniformly construed to mean a constituent member or part of the federal Union having an independent local governmental organization, but as used in the statutes and treaties of the United States it has been construed to include territories of the United States, and also foreign countries or states when such construction is required by the context of the act or instrument, and is necessary to effectuate its evident purpose. \* \* \*

"We think it clear from an examination of the entire act that the word 'state' as used in the amendment in question, was used in its limited constitutional sense, and was intended to mean a state of the federal Union. Other portions of the act are expressly made applicable to shipments from 'any state or territory or the District of Columbia to any other state, territory or District of Columbia, or to any foreign country,' showing that Congress did not understand or intend that the word 'state,' as used in the amendment, should include a foreign state or country, as well as a state of the Union.'

"In *J. H. Hamlen & Sons Co. v. Illinois Cent. R. Co.*, 212 Fed., 324, which was an action growing out of a transaction in which export bills of lading had been issued to cover shipments from a point in the United States to Buenos Aires, Argentine Republic through the port of New Orleans, the court said at page 326:

"The bills of lading expressly provide that the carrier issuing the same only issued them on its own behalf over its own lines, and as agent for the connecting lines, without a joint, but several, liability, and as the Carmack amendment applies only to transportation between the states and not to foreign countries, the defendant is clearly not liable under the bill of lading, even if it had been the initial carrier which had issued the bill of lading, which it was not. \* \* \*

"In its report in *The Cummins Amendment*, *supra*, page 693, the Commission held that the Cummins amendment did not apply to export and import shipments to and from foreign countries not adjacent to the United States for the reason that—while specifically stating that its terms shall apply to property received for transportation from certain points to certain other points, it makes no reference to shipments from a point in the United States to a point in a nonadjacent foreign country, or from a nonadjacent foreign country to a point in the United States.

"In *Brunswick-Balke-Collender Co. v. T. & M. Ry. Co.*, 44 I. C. C., 598, 600, property, which was delivered to the initial carrier for transportation from Muskegon,



Mich., to Mexico City, Mexico, via inland carrier to New Orleans, thence via steamer to Vera Cruz, Mexico, was damaged by fire after loading on the steamer at New Orleans and before it left the dock. The Commission, having occasion to consider whether or not the Cummins amendment was applicable to the shipment, referred to the fact that the Carmack amendment mentioned only transportation 'from a point in one state to a point in another state,' and said:

"This provision was extended by the Cummins amendment, effective June 2, 1915, so as to include and apply to property received for transportation 'from any point in the United States to a point in an adjacent foreign country.'

"\* \* \* While it is true that this shipment moved from a point in one state to a point in another state of the United States in reaching the port of export its essential character was that of 'foreign commerce,' or property received for transportation to an adjacent foreign country and that Congress did not regard the Carmack amendment as applicable to such shipments may be inferred from the act above indicated that the provisions of that amendment were extended by the Cummins amendment to specifically apply to commerce to an adjacent foreign country.'

"Applying the rationale of these cases to the question before us, it seems evident that it was not the intention of Congress to make the Cummins amendment applicable to traffic to a nonadjacent foreign country. There is a clear distinction between 'inter-state' and 'foreign' commerce in the wording of the act throughout, and in the definitions of the courts in construing these terms, whether or not the cases arise under the act to regulate commerce. Transportation in interstate commerce, as used in the act, means the transportation of commodities between, or among, the states, territories, etc. Transportation in foreign commerce, as used in the act, means the transportation of commodities between a point in the United States and a point in a foreign country.

"The deduction seems clear and inevitable that transportation from a point in the United States to a point in a nonadjacent foreign country can not be brought within the specification of the Cummins amendment of commerce 'from a point in one state or territory or the District of Columbia to a point in another state, territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country.' For obvious reasons, not necessary to enlarge upon, it seems equally clear that commerce from a point in the United States to a point in a nonadjacent foreign country moving wholly intrastate from the point of shipment to a port of export is not within the purview of the amendment. This interpretation is supported by the holdings of the courts in *St. Louis, I. Mt. & So. Ry. Co. v. Starbird*, 243 U. S., 592, and *Aldrich v. Atlantic Coast Line R. Co.*, 104 S. C., 364.

#### NATURE AND FUNCTIONS OF THE EXPORT BILL OF LADING.

"Considered as a receipt for the goods the export bill is substantially similar to the domestic bill. As a contract to transport, however, it has many points of difference. The undertaking with respect to transporting the property is that it is—

to be carried to the port (A) of \* \* \*, and thence by \* \* \* to the foreign port (B) \* \* \*, and to be there delivered in like good order and condition as above consigned, or to consignee's assigns, or to another carrier on the route to destination, if consigned beyond said port (B), \* \* \*.

"In consideration of the rate of freight herein named, it is hereby mutually agreed by each carrier, severally but not jointly, that the service to be performed by it hereunder shall be subject to the conditions not prohibited by law, whether printed or written, herein contained, which are hereby agreed to by the shipper and by him accepted for himself and his assigns.

"The form of signature on the proposed bill specifies that the agent for the carriers signs on behalf of them severally, but not jointly. The form also provides for signature by the shipper, or his agent; the declaration on behalf of the shipper being that 'I (we) accept all the conditions of this bill of lading.'

"The shippers object not only to the proposal that the carriers shall be bound only severally, and not jointly, but also to the unconditional acceptance of all the conditions to which they are asked to subscribe. The through export bill of lading is not regarded by the Commission as a joint contract or undertaking for the through carriage of property from an interior point in this country to a foreign port, but merely as an instrument combining, for the convenience of the shipper, the separate and several contracts of the rail carriers to the American port and the ocean carrier beyond. *New York Produce Exchange v. B. & O. R. R. Co.*, 46 I. C. C., 666, 670. It must clearly separate the liability of the rail and ocean carriers and show the published rate of the inland carrier. The publication of such rate does not in any manner limit the very valuable privilege of through billing. *Cosmopolitan Shipping Co. v. Hamburg-Amer. Packet Co.*, 13 I. C. C., 266, 281.

"The advantages of the through export bill to the shipper are important. Being a bill for through transportation, more favorable demurrage rules apply at the port than apply on domestic traffic. Moreover, if export traffic were moved to the port under a domestic bill of lading, the shipper would be obliged to take out a ship's bill of lading. This would often be a great disadvantage in financing his operations, for he could not draw a draft against his foreign customer until he had gotten his ship's bill of lading, whereas the through export bill may be negotiated immediately, as is the common custom.

"In discussing the proposed export bill it is necessary, therefore, to keep in mind the limitations referred to, and also the advantages to the shipper and the commerce of the country in having a negotiable form of export bill.

#### CONDITIONS OF THE EXPORT BILL OF LADING.

"The proposed bill contains the general condition that 'any alteration, addition or erasure herein which shall be made without an indorsement hereon signed by the agent of the carrier issuing this bill of lading shall be without effect, and this bill

of lading shall be enforceable according to its original tenor.' This provision, concerning which there is no controversy, is in accordance with the provisions of section 13 of the bills of lading act.

"Section 1, clause 2, *difference in elevator weights*.—By this section it is provided that the carrier shall not be liable for 'differences in the weights of grain, seed, or other commodities caused by \* \* \* or discrepancies in elevator weights.' This provision is identical with that proposed in the domestic bill and considered *ante*. The reasons which, in our judgment, required the condemnation of the rule there apply here, and it will be eliminated from the form to be approved by us.

"Section 1, clause 3, *liability of carrier as insurer and warehouseman for loss, damage, or delay caused by fire*.—This provision, likewise identical with that in the domestic bill, reads:

"For loss, damage or delay caused by fire occurring after forty-eight hours (exclusive of Sundays and legal holidays) after notice of the arrival of the property at the port of export has been duly sent or given, the carrier's liability shall be that of warehouseman only.

"For reasons there stated the phraseology prescribed in the domestic bill, with such modification as is appropriate to export traffic, should be employed in the export bill.

"Section 1, clause 5, *transportation in open cars*.—This provision is identical with that proposed to be inserted in the domestic bill and which we there condemned. Although, for some reason, the provision in the export bill is not attacked as it was in the domestic bill, we conceive of no reason why it is any more defensible or justifiable here than in the domestic bill.

"In part for the reasons stated in discussing its proposed insertion in the domestic bill, and further because we find that it would be unjust and unreasonable, it will be eliminated from the export bill."

"Section 2, clauses 1 and 2, *agency of issuing carrier—proposed exemption of participating carrier for liability for loss, damage, or injury to property not occurring on its own line*.—These two clauses, which must be considered together, provide:

"In issuing this bill of lading this company agrees to transport only over its own line and acts only as agent with respect to the portion of the route beyond its own line.

"No carrier shall be liable for loss, damage, or injury not occurring on its own road or its own water line or its portion of the through route, nor after said property has been delivered to the next carrier.

"The declared purposes of this section is to limit the contract of the issuing carrier to its own line, and to provide that no participating carrier in the through route shall be liable for loss, damage, or injury not occurring on its own portion of the route, or after the property shall have been delivered to the next connecting carrier. The carriers' contention, as stated on brief, is that the provisions of the Cummins amendment have no application to shipments carried under *this form* of bill of lading, as it is not used on shipments to adjacent foreign countries.

"Such a limitation if included in a bill of lading issued to cover a shipment to a point in an adjacent foreign country would be unlawful and void under the terms of the Cummins amendment.

"The shippers object to the retention of this clause in the bill and propose that the entire section shall be eliminated. The proposal of the shippers goes beyond the necessities of the situation, however, for while the carrier may not make such a limitation in respect of interstate traffic within this country, nor in respect of traffic to an adjacent foreign country, it may, in respect of export traffic to nonadjacent foreign countries, still enjoy its common law right to contract for such a limitation of its liability. Congress has not sought to take this right from it. While the carrier is bound to issue to the shipper a bill of lading on a shipment destined 'from a point in the United States to a point in an adjacent foreign country,' the law does not say that, in form, such a bill of lading shall be an 'export' bill. We think, however, that the matter should be removed from the field of controversy by inserting, as a general condition of the bill of lading, supplementary to the one already referred to, the following:

"This bill of lading is not to be used on traffic from a point in the United States destined to a point in an adjacent foreign country.

"Section 3, clause 1, *transportation to be only with reasonable dispatch unless by specific agreement indorsed on the bill*.—Section 3, clause 1, reads as follows:

"No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch unless by specific agreement indorsed hereon.

"While no objection is raised to the provisions of this clause, we think that the reservation by the carriers of the right to grant expedited service by special agreement indorsed on the bill of lading, as contained in the words 'unless by specific agreement indorsed hereon' is objectionable. Thus it would be possible for certain favored shippers through special indorsements on their bills of lading to secure special and expeditious handling of their shipments, possibly to the undue prejudice and disadvantage of their less favored competitors.

"For this reason we are of the opinion these words should be eliminated.

"Section 3, clause 3, *measure of carrier's liability for loss or damage*.—The carriers propose the following:

"The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee,



including the freight charges, if paid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation whether or not such loss or damage occurs from negligence.

"The shippers propose as a substitute for this provision the following:

"The amount of any shortage (loss of property in whole or in part) for which any carrier becomes liable shall be computed at the value of the property at the place and time of shipment under this bill of lading, including freight charges, if paid; unless a lower value has been agreed upon or is determined by the classification or tariff schedules upon which the rate is based, in either of which events such lower value shall be the maximum price to govern such computation. And for any damage or delay to property transported hereunder, the amount shall be the loss sustained by the owner of the property by reason of said damage or delay.

"It will be noted that the shippers' proposal differs from that of the carriers in only one material respect, namely, that in the event of damage or delay to property the amount of liability 'shall be the loss sustained by the owner,' which at common law is computed on the basis of the value at point of destination. However, as we have noted, the provisions of the Cummins amendment apply only to such export shipments as are destined to 'a point in an adjacent foreign country.' To shipments destined to a nonadjacent foreign country the provisions of this amendment do not apply, and our jurisdiction over the issuance, form, and substance of bills of lading covering such shipments is limited to the provisions which govern the inland or coastwise transportation to the port. It has been the practice of the carriers for many years to provide for the restriction of the amount of their liability to the value at point of origin in both their export and domestic bills of lading. They assert that the value at point of origin can be in most instances definitely and accurately determined, while the value at point of destination is often conjectural and inflated by anticipatory profits, involving frequent litigation in determining the measure of damages. We are of the opinion that the carriers' proposal in question is not shown to be unreasonable. However, we believe that the words 'including loss or damage arising from delay' should be inserted after the word 'damage' in the first line thereof, so that the same would read as follows: 'The amount of any loss, damage, including loss or damage arising from delay, for which any carrier is liable, etc.'

"Section 5, clause 1, carrier's liability as warehouseman after 48 hours.—The purpose of this provision is to effect, or secure, to the carrier the same exemption or limited liability at port (A) that is sought to be obtained by the proposal in a corresponding section of the domestic bill heretofore discussed. The only difference in phraseology is that which makes the proposed provision appropriate to transportation to a port of export instead of other destination. The shippers propose with respect to this provision, as they did with respect to the one in the domestic bill, that it be eliminated without substitution of any kind.

"The theory upon which the shippers' objections to the condition here proposed are primarily founded is that the export bill is a joint and not several, contract on the part of the participating carriers for through transportation and that so regarded there can be no suspension or interruption of the transportation, and therefore no period of time at the port when neither the inland nor ocean carrier assumes the liability of a carrier for the protection of the property, that is, that there can be no period of time during which both the inland and the ocean carrier may claim to be divested of liability other than that of warehouseman. But with this view we can not agree. The export bill is not a joint contract for through transportation from the inland point in this country to the foreign destination and the act to regulate commerce does not impose upon the carriers subject thereto any obligation to issue such a bill. The particular objections urged to the proposed condition are (1) that it tends to impair or destroy the negotiability of the bill; and, (2) (this is really involved in and constitutes in part the basis for objection (1) just stated), that in the event of delay or inability to deliver the shipment to the ocean carrier within the free time allowed by the inland carriers' tariffs the shipment may become subject to storage and other port charges which can not be definitely known to the shipper at the time he makes his sale or shipment, and which the foreign customer refuses to assume or pay if his contract of purchase is made c. i. f. It is also urged that the proposed section would adversely affect the insurance policies of the shipper, or would force the shipper to take special insurance. Witnesses testified in support of these objections.

"We have considered the subjects of free time allowances, storage, and other port charges in other cases. In *Export Freight Free Time*, 47 I. C. C. 162, decided November 12, 1917, we found that the carriers' proposal to reduce the free time allowed on export traffic from 15 days to 5 days at the north Atlantic ports and from 10 days to 5 days at the Gulf ports was not justified but that under the circumstances then existing the free time at the north Atlantic ports might reasonably be reduced to 10 days and at the Gulf ports to 7 days. In *New York Produce Exchange v. B. O. R. R. Co.*, *supra*, decided October 1, 1917, we said with respect to the assessment of storage charges at the port of New York in cases where the time which elapsed between the arrival of an export shipment by rail and its delivery to the ocean carrier exceeded the free time allowance of 15 days that as a matter of law neither the rail nor the ocean carrier is liable for the storage charges at the port. And further, page 671:

"The question whether such charges should be assessed is squarely presented and has been fully and thoroughly briefed and argued in No. 4844. In *the Matter of Bills of Lading*. Without prejudice to any conclusion that may be announced in that case, we hold upon this record that the assessment of such charges has been justified.



"Neither upon the facts shown of record in this case, nor upon the arguments made thereon, can we find that the assessment of storage charges, as such, under reasonable regulations, is unjust or unlawful.

"The proposed condition is, however, subject to this objection, that it undertakes to limit the carrier's liability to that of warehouseman only after 48 hours after its arrival at the port, and reserves the right, among other things, to remove it and store it in a public warehouse 'at the owner's risk.' For the reasons heretofore stated in connection with the domestic bill we must disapprove the proposed condition in these aspects.

"The record does not show that the operation of the condition objected to seriously impairs, much less destroys, the negotiability of the export bill of lading. As the law now stands, carriers can not be required to issue a through export bill of lading to the foreign destination binding jointly upon them and subjecting them to the same limitations that the law imposes upon them in respect of the issuance of domestic bills of lading applicable on interstate traffic and on traffic destined to adjacent foreign countries.

"We disapprove the condition as proposed, but we approve a condition reading as follows:

"Property not removed by the exporting carrier, or the party entitled to receive it, within the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at port (A) has been duly sent or given, and after placement of the property for delivery at port (A), or tender of the property for delivery upon order of the party entitled to receive it has been made, may be kept in vessel, car, depot, or place of delivery of the carrier or warehouse, subject to the tariff charge for storage and to the carrier's responsibility as warehouseman, only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at port (A), or other available place, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

"*Section 5, clause 2, receipt or delivery of property at private or other sidings, wharves, or landings.*—This clause, which is identical with a corresponding clause of the domestic bill, heretofore discussed, reads, as follows:

"Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent, shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels and *except in case of carrier's negligence, when received from or delivered on private or other sidings, or on such wharves or landing shall be at owner's risk until the cars are attached to and after they are detached from trains, or until loaded into and after unloaded from vessels.*

"The shippers object to the portion of the condition printed in italics and propose that it be eliminated without substitution. There is nothing of record to indicate that the objectionable part of the condition stated above is any more reasonable or defensible when applied to export traffic than when applied to domestic traffic. It seems to require no further consideration and for reasons already stated in discussing its proposed inclusion in the domestic bill we find here, as there, that the proposal expressed in italics is and would be unreasonable and should be omitted from the bill. It is therefore disapproved.

"*Section 9, clauses 1, 2, 3, 4, 5, and 6, limitations of liability of water carriers.*—Since, as we have already held herein, the Cummins amendment does not apply to transportation from a point in the United States to a point in a nonadjacent foreign country, the carriers are not precluded from incorporating in the export bill of lading reasonable provisions applicable exclusively to water carriers. The shippers object to the incorporation of the proposed clause in the export bill upon the same grounds that they opposed its inclusion in the domestic bill. We need not repeat those arguments.

"We have given consideration to the conditions and stipulations proposed by the carriers and to the objections and counter stipulations proposed by the shippers. We are convinced that many of the stipulations in respect of the water carriers' exemption from liability proposed in their behalf are unreasonable and indefensible, and, in many instances, in violation of the law. The objections of the shippers are in many cases ill considered any equally unreasonable. We think that reasonable conditions and lawful limitations of liability may with propriety and advantage be incorporated in the export bill, and upon consideration thereof we find that the following would be just and reasonable:

"*Sec. 9.* Except in case of diversion from rail to water route, as provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemption provided by statute and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

"No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

"If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances, whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall have the liberty to call at any port or ports, to tow and be towed, to transfer, transship, or lighter, to load and discharge goods at any time, and assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence, such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

"If the shipowner shall have complied with the provisions of section 3 of the Harter act, it is hereby agreed that the owners or consignees of the cargo shall contribute with the shipowner in general average, and shall pay any salvage or special charges properly incurred, even though the necessity for the sacrifice or expenditure was brought about by fault in navigation or management of the ship.



"If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

"The term 'water carriage' in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

"Section 10, clause 1, exemptions from liability for delay, and reduction of liability to that of warehouseman, while the property is waiting further conveyance.—Section 10, clause 1, as proposed by the carriers, reads as follows:

"No carrier shall be liable for delay, nor in any respect other than a warehouseman, while the property awaits further conveyance, and, in case the whole or any part of the property specified herein be prevented by any cause from going from the port of export in the first vessel of the ocean line for which intended leaving after arrival of such property at the said port, the carrier hereunder then in possession is at liberty to forward said property by succeeding vessel of said line, or, if deemed necessary, by any other vessel.

"The shippers object to the words italicized above and suggest their elimination without any substitution in the place thereof. Their objection is based upon the theory that as an export shipment is a through shipment from an inland point of origin to a foreign destination, necessarily requiring transportation over a part of the route by a foreign carrier, the contract of carriage is a joint and indivisible one, instead of a separate and distinct contract on the part of each carrier participating in the transportation. However, as already stated, we are of the opinion that the provisions of the Carmack and Cummins amendments are inapplicable to export shipments destined to points in nonadjacent foreign countries, and it is only by the provisions of these amendments that carriers are prohibited from restricting their liability for loss, damage, or injury not occurring on their respective separate lines. In the absence, therefore, of any statutory provision, a carrier is within its legal rights in contracting against liability for a delay not occurring on its own line not the result of its negligence, and, where proper tender of a shipment has been made to a connecting line, to reduce its liability thereafter to that of a warehouseman for the period such shipment is awaiting further transportation. We are of the opinion that the words in italics are not illegal, but they are unreasonable in that they are capable of an interpretation which would exempt all of the carriers from delay, however caused or wherever occurring. We find, therefore, that the following language should be adopted instead of that proposed by the carriers:

"No carrier shall be liable for delay not occurring on its own line, or the result of its negligence, nor in any respect other than as warehouseman, while the property awaits further conveyance after proper tender of delivery to the next connecting carrier has been made, and in case the whole or any part of the property specified herein be prevented by any cause from going from the port of export in the first vessel of the ocean line for which intended leaving after arrival of such property at the said port, the carrier hereunder then in possession is at liberty to forward said property by succeeding vessel of said line, or, if deemed necessary, by any other vessel.

"Section 10, clause 2, termination of inland carrier's liability upon delivery made in accordance with existing arrangements at the port.. (A).—This clause reads as follows:

"This contract is executed and accomplished, and all liability hereunder terminates upon the delivery of the said property to the exporting steamer, her master, agents, or servants, or to the exporting steamship company, or subject to existing delivery arrangements, if any, on the pier usually used by the exporting steamer at the port of export, whether or not the same may be the property of or used as a warehouse by the inland carrier also, and the inland freight and all other charges hereinbefore provided for shall be a first lien on the property, and shall be due and payable by the steamship company or vessel.

"The shippers object to the provision stated in italics above, apparently on the theory that an interim might thereby be permitted during which no carrier would assume liability other than as a warehouseman. This does not necessarily follow. There are, of course, circumstances and conditions existing at some ports where there is necessarily an intermediary between the inland carrier and the ocean carrier. But the provision objected to relates to the local arrangement existing at some ports by which the inland carrier makes delivery to the ocean carrier and the latter accepts the shipment for further transportation. Obviously, when the inland carrier shall have made a proper delivery to the connecting ocean carrier, the former is relieved from and the latter assumes the carrier liability. Delivery by the inland carrier to the ocean carrier in accordance with the legal custom or usage of the port, or arrangement between them, implies acceptance of the goods by the ocean carrier. A case in point is that of *Washburn-Crosby Co. v. Boston & A. R. R.*, 180 Mass. where a railroad company's pier was jointly used by it and a steamship company with which it formed a connection. The steamship company by an existing arrangement used and occupied a part of the pier for the purpose of receiving freight deposited upon it by the railroad company and intended for further transportation by the steamship line. It also appeared that the unloading of freight in such a manner was regarded by both companies as a delivery to the steamship company. A quantity of flour which the railroad company had unloaded on the pier to await transportation by the steamship company was destroyed by fire. Suit was brought against the railroad company for its value, and the question was whether the facts showed a delivery. In deciding the question the court said:

"If, then, as might have been found, it was understood in advance that as soon as goods were left upon the wharf by the railroad the steamship company was free to take them at its pleasure and that it was expected to take notice of their presence and to assume responsibility for them without more special notification, the deposit of the flour on the wharf was an actual delivery without more.

"It was held therefore that a delivery had been shown and that the railroad company was not liable. It by no means follows that the owner of the goods may not recover for the loss from the connecting carrier to whom they had been constructively delivered.

He may pursue another in whom was the last actual possession. But if, as between the carriers themselves, the one to whom delivery has been constructively made for further carriage is the responsible party, there is no reason why that carrier should not be liable also to the owner of the goods. 1 *Hutch. Carr.* (3d Ed.), §138.

"As we understand the law, the carriers may properly contract for the exemption contemplated in this clause. It does not appear from all the record that it is in any wise unreasonable and it is therefore approved.

#### MISCELLANEOUS MATTERS.

"At the inception of this proceeding and during its pendency, issue was made in respect to certain features of the negotiability or assignability of bills of lading. The enactment of the bills of lading act, 39 Stat. L., 538, comprehensively covers all these matters, we believe, and no disposition of them remains to be made in this report.

"The question of time for filing claims and of notice of intent to file claims presented certain issues at the inception of the hearing. The Cummins amendment provides that—

"It shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days and for the filing of claims for a shorter period than four months, and for the institution of suits than two years: *Provided, however,* That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as condition precedent to recovery.

"Since the proceeding was instituted the carriers, at the suggestion of the Commission, have modified the rigor of their requirements in respect of such matters, and it is now provided in the proposed domestic bill of lading that—

"Except where the loss, damage, or injury complained of is due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, as conditions precedent to recovery, claims must be made in writing to the originating or delivering carrier within six months after delivery of the property (or in case of export traffic, within nine months after delivery at port of export), or in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed; and suits for loss, damage, or delay shall be instituted only within two years and one day after delivery of the property, or, in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed.

"The export bill provides that claims must be filed within nine months.

"These seem to be reasonable provisions in respect to the time of filing claims and, so far as we are advised, they are not objected to by any of the shippers. There are now pending before the Commission formal complaints in two cases, *Price & Co. v. A. T. & S. F. Ry. Co.*, No. 8369, and *Blackburn & Co. v. A. A. R. R. Co.*, No. 8607, that were heard, briefed, and argued in conjunction with this proceeding. They involve certain issues with respect to transactions occurring before the carriers established the more liberal rules as to time. They will be disposed of in a separate report, and what is here said should be understood to be without prejudice to the disposition of those cases or any questions necessarily connected therewith.

"As stated in an earlier part of this report, certain interests have advocated the prescribing of special forms of bills of lading for perishable products and for coal. We are not convinced, upon consideration of all the facts of record and the arguments made in advocacy of such bills, that they are essential. It is believed that the uniform bills prescribed will be adequate to care for any peculiar requirements of such traffic.

"A uniform live stock contract will be prescribed in a supplemental report and order as soon as practicable after consideration of the record which has been more fully developed through the medium of a further hearing had with that purpose in view.

"The Commission has not undertaken to deal with all the multiplicity of suggestions that have been made by the parties during the course of the hearing. A great many of them can not properly be made the subject of conditions in the bill of lading. Many others are matters of carriers' practices which they should henceforth conform to the rulings herein so far as the latter are applicable. Still others are or will become questions of interpretation.

"An appropriate order will be entered in connection with this report prescribing the forms of domestic and export bills of lading which we find would be just and reasonable to be used upon the lines of all common carriers subject to the act who, together with the Director General of Railroads, have been heretofore served with notice and by due process have been made parties respondent herein."

#### 2016-X. FORM OF UNIFORM EXPRESS RECEIPT PRESCRIBED BY THE INTERSTATE COMMERCE COMMISSION FOR USE IN INTERSTATE AND FOREIGN COMMERCE.

The following is a copy of the order of the Interstate Commerce Commission, issued April 2, 1917, prescribing the Uniform Express Receipt:<sup>1</sup>



"SUPPLEMENTAL ORDER No. 18.

"At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 2d day of April, A. D. 1917.

No. 4198

"IN THE MATTER OF EXPRESS RATES, PRACTICES, ACCOUNTS, AND REVENUES.

RELEASED RATES.

"THE ADAMS EXPRESS COMPANY, AMERICAN EXPRESS COMPANY, CANADIAN EXPRESS COMPANY, DOMINION EXPRESS COMPANY, GREAT NORTHERN EXPRESS COMPANY, NATIONAL EXPRESS COMPANY, NEW YORK & BOSTON DESPATCH EXPRESS COMPAY, NORTHERN EXPRESS COMPANY, SOUTHERN EXPRESS COMPANY, WELLS FARGO & COMPANY, AND WESTERN EXPRESS COMPANY, REPENDENTS.

"It appearing. That on October 10, 1916, the Commission entered upon an investigation concerning the propriety of the issuance of an order authorizing the maintenance of express rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and its conclusions thereon, which report is hereby referred to and made a part hereof:

"It is ordered, That the respondents be, and they are hereby, authorized to establish, upon not less than 10 days' notice to the Interstate Commerce Commission and the general public, by filing and posting in the manner prescribed in section 6 of the act to regulate commerce, the following classification rules, to wit:

\* \* \* \* \*

"It is further ordered, That the said respondents be, and they are hereby authorized, upon like notice, to amend the form and terms and conditions of the uniform express receipt so that they will read as follows:

UNIFORM EXPRESS RECEIPT.

The company will not pay over \$50, in case of loss, or 50 cents per pound, actual weight, for any shipment in excess of 100 pounds, unless a greater value is declared and charges for such greater value paid.

.....EXPRESS COMPANY.

Non-negotiable receipt.

.....191....

Received from ..... subject to the classifications and tariffs in effect on the date hereof, .....

....., value herein declared by

shipper to be..... Dollars.

(See footnote.)

Consigned to .....

at ..... Charges, .....

Which the company agrees to carry upon the terms and conditions printed on the back hereof, to which the shipper agrees, and as evidence thereof accepts and signs this receipt.

.....  
Shipper. For the company.

NOTE.—The company's charge, except upon ordinary live stock, is dependent upon the value of the property, as declared or released by the shipper. If the shipper desires to release the value to \$50 for any shipment of 100 pounds or less, or not exceeding fifty cents per pound, actual weight, for any shipment in excess of 100 pounds, the value may be released by inserting "not exceeding \$50," or "not exceeding fifty cents per pound," in which case the company's liability is limited to an amount not exceeding the value so declared or released.

## TERMS AND CONDITIONS.

1. The provisions of this receipt shall inure to the benefit of and be binding upon the consignor, the consignee, and all carriers handling this shipment, and shall apply to any reconsignment, or return thereof.

2. In consideration of the rate charged for carrying said property, which is dependent upon the value thereof and is based upon an agreed valuation of not exceeding fifty dollars for any shipment of 100 pounds or less, and not exceeding fifty cents per pound, actual weight, for any shipment in excess of 100 pounds, unless a greater value is declared at the time of shipment, the shipper agrees that the company shall not be liable in any event for more than fifty dollars for any shipment of 100 pounds or less, or for more than fifty cents per pound, actual weight, for any shipment weighing more than 100 pounds, unless a greater value is stated herein. Unless a greater value is declared and stated herein the shipper agrees that the value of the shipment is as last above set out and that the liability of the company shall in no event exceed such value.

3. Unless caused by its own negligence or that of its agents, the company shall not be liable for—

a. Difference in weight or quantity caused by shrinkage, leakage, or evaporation.

b. The death, injury, or escape of live freight.

c. Loss of money, bullion, bonds, coupons, jewelry, precious stones, valuable papers, or other matter of extraordinary value, unless such articles are enumerated in the receipt.

4. Unless caused in whole or in part by its own negligence or that of its agents, the company shall not be liable for loss, damage, or delay caused by—

a. The act or default of the shipper or owner.

b. The nature of the property, or defect or inherent vice therein.

c. Improper or insufficient packing, securing, or addressing.

d. The act of God, public enemies, authority of law, quarantine, riots, strikes, perils of navigation, the hazards or dangers incident to a state of war, or occurrence in customs warehouse.

e. The examination by, or partial delivery to, the consignee of C. O. D. shipments.

f. Delivery under instructions of consignor or consignee at stations where there is no agent of the company after such shipments have been left at such stations.

5. Packages containing fragile articles or articles consisting wholly or in part of glass must be so marked and be packed so as to insure safe transportation by express with ordinary care.

6. When property is destined to a point at which no express company has an agency it should be marked with the name of the express station at which delivery will be accepted. If not so marked it will be carried to the express station nearest the destination point and arrival notice given consignee.

7. Except where the loss, damage, or injury complained of is due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, as conditions precedent to recovery claims must be made in writing to the originating or delivering carrier within four months after delivery of the property or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed; and suits for loss, damage, or delay shall be instituted only within two years and one day after delivery of the property or, in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed.<sup>2</sup>

8. If any C. O. D. is not paid within thirty days after notice of nondelivery has been mailed to the shipper the company may at its option return the property to the consignor.

9. Free delivery will not be made at points where the company maintains no delivery service; at points where delivery service is maintained free delivery will not be made at addresses beyond the established and published delivery limits.

SPECIAL ADDITIONAL PROVISIONS AS TO SHIPMENTS FORWARDED FROM THE UNITED STATES TO PLACES IN FOREIGN COUNTRIES.

10. If the destination specified in this receipt is in a foreign country, the property covered hereby shall, as to transit over ocean routes and by their foreign connections to such destination, be subject to all the terms and conditions of the receipts or bills of lading of ocean carriers as accepted by the company for the shipment, and of foreign carriers participating in the transportation, and as to such transit is accepted for transportation and delivery subject to the acts, ladings, laws, regulations, and customs of over-sea and foreign carriers, custodians, and governments, their employees and agents.

11. The company shall not be liable for any loss, damage, or delay to said shipments over ocean routes and their foreign connections, the destination of which is in a foreign country, occurring outside the boundaries of the United States, which may be occasioned by any such acts, ladings, laws, regulations, or customs.

12. It is hereby agreed that the property destined to such foreign countries, and assessable with foreign governmental or customs duties, taxes, or charges, may be



stopped in transit at foreign ports, frontiers, or depositories, and there held pending examination, assessments, and payments, and such duties and charges, when advanced by the company, shall become a lien on the property.

"And it is further ordered, That a copy of this order be served upon each of the parties to this proceeding.

"By the Commission.

(Seal)

George B. McGinty,  
Secretary."

1. In the Matter of Express Receipts, Practices, Accounts, and Revenues, (1917), 43 I. C. C. Rep. 510.
2. In National Industrial Traffic League v. American Railway Express Co., Director General, (1920), 58 I. C. C. Rep. 304, the Commission said: "In *Decker & Sons v. Director General*, 55 I. C. C., 453, substantially the same clause in the freight bill of lading was held not to prohibit the payment of meritorious claims after two years and one day, when filed with the carrier within the period required by another clause of the rule. Our conclusions in that case with respect to the provisions of the freight bill of lading are equally applicable to the similar provisions of the uniform express receipt here in issue, and we so find. We further find that the clause in question was unreasonable and unduly prejudicial in that it did not conform substantially to the provisions heretofore found reasonable in *Decker & Sons v. Director General*, *supra*."

"As to claims arising on and after the effective date of the applicable provisions of the Interstate Commerce Act the time within which suits may be instituted against the carrier is prescribed in paragraph (11), section 20. The defendant companies will be expected to incorporate in their tariffs and uniform express receipts the terms and conditions of that statute."

2016-Y. FORM OF UNIFORM LIVE STOCK CONTRACT PRESCRIBED BY THE  
INTERSTATE COMMERCE COMMISSION FOR USE IN INTERSTATE  
AND FOREIGN COMMERCE.

*In the Matter of Bills of Lading* (April 14, 1919), 52 I. C. C. Rep. 671, wherein the Commission prescribed uniform forms of domestic and export bills of lading the report on page 740 stated: "A uniform live stock contract will be prescribed in a supplementary report and order as soon as practicable after consideration of the record which has been more fully developed through the medium of a further hearing had with that purpose in view."

As explained in Sections 2016-W, 2016-Z, and 2020-B, the Commission's order in the above entitled case was enjoined by the Federal Court for the Southern District of New York in *Alaska Steamship Co. v. United States*. That case was appealed to the Supreme Court and in its decision, rendered May 17, 1920, the Supreme Court pointed out that the Transportation Act passed pending this appeal makes it evident that certain changes will be required in both forms of bills of lading prescribed by the Commission in order that they may conform to the requirements of the statute. In view of the foregoing bills of lading forms prescribed by the Commission were never put into use, and a supplemental report containing a live stock report referred to on page 740 of 52 I. C. C. Rep. was not issued.<sup>1</sup>

Consideration is now being given by the Commission to the matter of preparing a new uniform bill of lading to meet the changes which have taken place in the law and it is expected that the Commission's report in that case will also contain a form of uniform live stock contract. However, the Commission is not in a position at this time to advise definitely when the Commission's report will be issued or what information such report may contain.<sup>2</sup>

1. Extract from letter from Interstate Commerce Commission, office of the Secretary, addressed to Traffic Law Service Corporation, dated July 22, 1921, file No. 690095.

2. *Ibid*.

2016-Z. LEGAL STATUS OF FORMS OF CARRIERS' BILLS OF LADING AND CONTRACTS OF SHIPMENT PROMULGATED IN THE CONSOLIDATED FREIGHT CLASSIFICATION.

In Consolidated Freight Classification No. 2, I. C. C. No. 46, effective April 1, 1921, the carriers authorize the use of certain forms of bills of lading and contract of shipment in the Official, Western, and Southern Classification Territories. None of these forms have received the official sanction of the Interstate Commerce Commission and any provisions of such contracts which may be in contravention of the provisions of Section 20 of the Interstate Commerce Act would be unlawful and void, inasmuch as the "Carmack Amendment" and the "Cummins Amendment" to Section 20 of the Act made unlawful and void any provisions of the carriers' contracts limiting liability or limiting the amount of recovery.

The Uniform Bill of Lading for use in domestic and export traffic, the Uniform Express Receipt and the Uniform Live Stock Contract which have been prescribed by the Interstate Commerce Commission are set forth in Sections 2016-W, 2016-X and 2016-Y, respectively, of "Traffic Law Service." These so-called "Uniform Bill of Lading," "Export Bill of Lading," and "Uniform Live Stock Contract" contained in the Consolidated Freight Classification No. 2, I. C. C. No. 46, are not the forms which have been prescribed by the Interstate Commerce Commission. The carriers have not promulgated in their Classification or tariffs the forms of bills of lading and shipping contracts which have been prescribed by the Commission for the reasons set forth under the Sections of "Traffic Law Service" referred to.

The order of the Interstate Commerce Commission in the proceeding entitled *In the Matter of Bills of Lading* (1919), 52 I. C. C. Rep. 671, wherein it prescribed forms of uniform domestic and export bills of lading, was enjoined by the Federal Court for the Southern District of New York in *Alaska Steamship Co. v. United States* (1915), 259 Fed. Rep. 713. That case was appealed to the United States Supreme Court, and in its decision in *United States v. Alaska Steamship Co.*, rendered May 17, 1920, 243 U. S. 113, 40 Sup. Ct. Rep. 448, 64 L. Ed. 808, the Supreme Court pointed out that the Transportation Act passed pending this appeal makes it evident that certain changes will be required in both forms of bills of lading prescribed by the Commission in order that they may conform to the requirements of the statute. In view of the foregoing the bills of lading forms prescribed by the Commission were never put into use.

On December 13, 1920, the Commission issued the following memorandum to the press:

"In response to numerous inquiries the Commission has advised that it will interpose no objection to the use by carriers in Official and Western Classification Territories of straight and order bills of lading with the following endorsement thereon:

"This bill of lading is subject to the terms and conditions set forth in the uniform bill of lading as incorporated in Consolidated Freight Classification No. 1, supplements thereto, and reissues thereof; as fully as though printed thereon in full."

The effect of such endorsement was to permit those shippers and carriers who had already adopted the forms of bills of lading prescribed by the Commission in 52 I. C. C. Rep. 671, and who had



acquired a supply of such forms to make use of such blanks, but modifying the terms and conditions so as to conform to the carriers' terms and conditions incorporated in the Consolidated Freight Classification No. 1 and reissues thereof.

Consideration is now being given by the Commission to the matter of preparing a new uniform bill of lading to meet the changes which have taken place in the law by the Transportation Act of February 28, 1920. However, the Commission is not in a position at this time to advise definitely when the Commission's report will be issued or what information such report may contain.<sup>1</sup>

It should be noted, however, that the Consolidated Freight Classification No. 2, I. C. C. No. 46, is filed by the carriers with numerous State public utilities commissions as authority for use on intrastate traffic in certain States. Therefore, the forms of bills of lading and shipping contracts contained in such Consolidated Freight Classification govern intrastate traffic moving in those States where such Classification has been adopted and prevails, in the absence, of course, of any State restrictions to the contrary.

The Interstate Commerce Commission has plenary power under the Interstate Commerce Act to require carriers to establish, observe, and enforce just and reasonable regulations and practices affecting the issuance, form, and substance of bills of lading. The Federal Government being supreme in this field by virtue of the enactment of Section 20 of the Interstate Commerce Act, its action in prescribing forms of bills of lading and shipping contracts supersede all State action on this subject, and also all private contracts in contravention thereof. Therefore, any bills of lading or shipping contracts validly prescribed by the Interstate Commerce Commission in accordance with the terms of Section 20 of the Interstate Commerce Act govern all shipments in interstate and foreign commerce, regardless of the form of contract, receipt, or bill of lading which may be issued by the carrier, and regardless of whether any written contract is issued at all. Any forms validly prescribed by the Interstate Commerce Commission supersede any of the carriers' forms which may be authorized in their tariffs or classifications which are at variance with the forms officially prescribed by the Commission.

*Uniform bills of lading adopted by carriers in Official and Western Classification Territories.*

The following are the forms of the Uniform Bills of Lading, both "Straight or Not Negotiable Bill," and "Order Bill," which have been adopted by the carriers in the Official and Western Classification Territories, as authorized by the Consolidated Freight Classification.<sup>2</sup>





## CONDITIONS.

Sec. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner or party entitled to make such request, or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

Sec. 2. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market, or otherwise than with reasonable despatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

Claims must be made in writing to the originating or delivering carrier within six months after delivery of the property (or in case of export traffic, within nine months after delivery at port of export) or in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed: Provided that if the loss, damage or injury was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim or filing of claims shall be required as a condition precedent to recovery. Suits for loss, damage or injury shall be instituted not later than two years and one day after the day on which notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof, specified in the notice. Where claims for loss, damage or delay are not filed, or suits are not instituted thereon in accordance with the foregoing provisions, the carrier will not be liable and such claims will not be paid.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

Sec. 3. All property shall be subject to necessary co-operation and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for detention or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 4. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached and after they are detached from trains.

Sec. 5. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 8. Except in case of diversion from rail to water route, which is provided for in Section 2 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow or be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this Bill of Lading.

Sec. 9. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect and this bill of lading shall be enforceable according to its original tenor.





**CONDITIONS.**

Sec. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carriers liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner or party entitled to make such request, or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

Sec. 2. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market, or otherwise than with reasonable despatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

Claims must be made in writing to the originating or delivering carrier within six months after delivery of the property (or in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed: Provided that if the loss, damage or injury was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claims shall be required as a condition precedent to recovery. Suits for loss, damage or injury shall be instituted not later than two years and one day after the day on which notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof, specified in the notice. Where claims for loss, damage or delay are not filed, or suits are not instituted thereon, in accordance with the foregoing provisions, the carrier will not be liable and such claims will not be paid.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

Sec. 3. All property shall be subject to necessary co-operation and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 4. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays)

days) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of trucks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached and after they are detached from trains.

Sec. 5. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 8. Except in case of diversion from rail to water route, which is provided for in Section 2 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow or be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this Bill of Lading.

Sec. 9. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect and this bill of lading shall be enforceable according to its original tenor.

*Bills of lading in use by carriers in Southern Classification Territory.*

The bills of lading used by the Southern Classification Territory carriers are the forms individually adopted by such carriers.<sup>3</sup> A so-called "Revised Standard Bill of Lading" is in general use by the carriers in Southern Classification Territory, which is a modified form of the Uniform Bill of Lading approved by the Interstate Commerce Commission in the proceeding entitled in *In the Matter of Bills of Lading*, (1919), 52 I. C. C. Rep. 676, 686, et seq., wherein the Commission stated: "Efforts to bring into use a uniform bill of lading were first initiated by carriers about 25 years ago, and some measure of success was attained through the adoption by carriers in central freight and trunk line association territories of forms that were substantially uniform. Action by this Commission was first taken in November, 1904, when, acting upon numerous complaints, it instituted an inquiry into certain proposed changes in the provisions of bills of lading by carriers in official classification territory. After extended hearings the Commission, in June 1908, issued its report *In the Matter of Bills of Lading*, 14 I. C. C. Rep. 346. This report dealt only with the general merchandise bill of lading. Special bills of lading for live stock and other special kinds of property were not considered. It did not undertake even to prescribe a general merchandise form of bill of lading and order its adoption because, in its view, such an order at that time would have exceeded its authority. Moreover, the situation did not seem to demand such a positive direction. It did, however, recommend the adoption by all carriers, as a uniform bill of lading, of the merchandise form proposed by a joint committee of shippers and carriers. The form recommended was generally accepted and used by carriers in official and western classification territories, but it was not adopted to any great extent by the carriers in southern classification territory. The latter group of carriers adopted, for the most part, a modified form of the approved bill which is commonly referred to as the 'revised standard bill of lading.' "

*Uniform Live Stock Contract adopted by carriers in Official Classification Territory.*

The following is the form of Uniform Live Stock Contract which has been adopted by carriers in the Official Classification Territory:<sup>4</sup>





CONTRACT WITH MAN OR MEN IN CHARGE OF LIVE STOCK.

.....Station .....192....

In consideration of the carriage of the undersigned upon a freight train in charge of the live stock mentioned in the within contract, whether with or without charge for such carriage, each one of the undersigned severally hereby voluntarily assumes all risk of accident or damage to his person or property, and hereby releases and discharges each and every carrier from every claim, liability, or demand of any kind for or on account of any personal injury or damage of any kind sustained by him, whether the same be caused by the negligence of such carrier or any of its employees or otherwise; and agrees that whenever he shall leave the caboose and pass over or along the cars or track, he will do so at his own risk of personal injury, from whatever cause, and that no carrier shall be required to stop or start its train or caboose cars at or from the depots or platforms, or to furnish light for his accommodation or safety.

.....  
 .....  
 .....  
 .....

Signature  
 of Man or Men  
 in Charge.

..... Witness.

CONDITIONS.

Sec. 1. No carrier of any of the live stock herein described shall be liable for any loss thereof or damage there-to or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, nor except in case of its negligence by riots, strikes or stoppage of labor, or resulting from causes beyond its control.

Unless caused by the negligence of the carrier or its employees, no carrier shall be liable for or on account of any injury or death sustained by said live stock occasioned by any or either of the following causes: overloading, crowding one upon another, kicking or goring, suffocation, fright, burning of hay or straw or other material used for feeding or bedding, fire from any cause whatever, heat, cold, changes in weather, delay caused by stress of weather or obstruction of track.

Sec. 2. In issuing this contract this company agrees to transport only over its own line, and except as otherwise provided by law, acts only as agent with respect to the portion of the route beyond its own line. No carrier shall be liable for loss, damage, delay or injury not occurring on its own road, or its portion of the through route, nor after said live stock has been delivered to the next carrier, except as such liability is or may be imposed by law, but nothing contained in this contract shall be deemed to exempt the initial carrier from any such liability so imposed.

Sec. 3. No carrier is bound to transport said live stock by any particular train or vessel, or in time for any particular market, or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said live stock by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the live stock at the place and time of shipment under this contract, including the freight charges, if paid, but shall in no case exceed the amounts stated herein by the shipper.

Except in cases where the loss, damage or injury complained of is due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, claims must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the live stock, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss, damage or delay shall be instituted only within two years after delivery of the live stock; or, in case of failure to make delivery, then within two years after a reasonable time for delivery has elapsed.

Any carrier or party liable on account of loss of or damage to any of said live stock shall have the full benefit of any insurance that may have been effected upon or on account of said live stock, so far as this shall not avoid the policies or contracts of insurance.

Sec. 4. The owner or consignee shall pay the freight and all other lawful charges accruing on said shipment, and, if required, shall pay the same before delivery.

Sec. 5. Unless otherwise provided by lawful tariff, the shipper at his own risk and expense shall load and unload said live stock, and, in case any person shall accompany said live stock in charge of the same, take care of, feed and water said live stock while being transported, whether delayed in transit or otherwise, and see that all doors and openings in said car or cars are at all times so closed and fastened as to prevent the escape therefrom of any of said live stock.

Sec. 6. The shipper shall inspect the body of the car or cars in which said live stock is to be transported, and satisfy himself that they are sufficient and safe, and in proper order and condition, and no carrier shall be liable on account of any loss of or injury to said live stock occurring by reason of any insufficiency in or defective condition of the body of said car or cars which reasonably could have been discovered by the shipper.

Sec. 7. Any person accompanying said live stock in charge of the same, leaving the caboose and passing over or along the cars or track, shall do so at his own risk of personal injury from any cause whatever, and no carrier shall be required to stop or start its trains or caboose cars at or from the depots or platforms, or to furnish lights for the accommodation or safety of any person accompanying said live stock.

Sec. 8. Any alteration, addition, or erasure in this contract which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this agreement, shall be without effect, and this agreement shall be enforceable according to its original tenor.



*Live Stock Contracts in use by carriers in the Western and Southern Classification Territories.*

The Live Stock Contracts used by carriers in Western and Southern Classification Territories are the forms individually adopted by such carriers.

*Export Bill of Lading of Official Classification Territory carriers.*

The following is the form of the Export Bill of Lading used by carriers in Official Classification Territory, as authorized by the Consolidated Freight Classification.<sup>5</sup> It will be noted that the conditions of the Export Bill of Lading are arranged under three heads, to wit: (1) Those governing the inland service to the ports of exports; (2) Those relating to the service after arrival at the port of export and until delivery at the foreign port; (3) Those relating to the service after delivery at the foreign port and until delivery at the ultimate foreign destination.

**OFFICIAL CLASSIFICATION EXPORT BILL OF LADING**

Export Bill of Lading No.....Lot No.....Contract No.....

**THE.....(issuing).....COMPANY,**  
**IN CONNECTION WITH OTHER CARRIERS ON THE ROUTE**

Received at ..... from ..... the following property, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, numbered, consigned and destined as indicated below:

CONSIGNEE AND DESTINATION	MARKS AND NUMBERS	ARTICLES
.....	.....	.....
.....	.....	.....
.....	.....	.....
<b>PARTY TO BE NOTIFIED</b>	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

\*..Weight...(subject to correction) .....  
(\*U. S. Law requires Agent issuing Bill of Lading to write either "shipper's" or carrier's" before "weight.")

To be carried to the Port (A) of.....and thence by.....to the Port (B) ..... (or so near thereto as steamer may safely get, with liberty to call at any port or ports in or out of the customary route), and to be there delivered in like good order and condition as above consigned, or to consignee's assigns, or to another carrier on the route to destination if consigned beyond said port (B), upon payment immediately on discharge of the property, of the freight thereon, at the rate from.....to.....of.....cents, United States gold currency, per one hundred pounds GROSS WEIGHT, and advanced charges.....(\$.....), with all other charges and average, without any allowance of credit or discount; settlement to be made on the basis of 4 shillings 2 pence, 4.25 marks 5.25 francs, 2.50 Dutch guilders, 3.80 kroner to the dollar, United States gold currency; if in other currency than herein provided for, settlement to be made at the rate of \$4.80 to the pound sterling, at the current rate of exchange officially quoted on the day the ocean steamer enters the Custom House at its port of discharge, for which bankers' shortsight bills on London can be bought; when ocean freight is prepaid, \$4.86 United States gold is equivalent to one pound sterling.

In consideration of the rate of freight herein named, it is hereby stipulated that the service to be performed hereunder shall be subject to the conditions, whether printed or written, herein contained, and said conditions are hereby agreed to by the shipper and by him accepted for himself and his assigns as just and reasonable.

# CONDITIONS.

Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading shall be void.

ATTENTION OF SHIPPERS IS CALLED TO THE ACT OF CONGRESS OF 1851, which provides that "any person or persons shipping Oil of Vitriol, Unkilled, or any other inflammable, explosive, or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation."

I.—With respect to the service until delivery at the port (A) first above mentioned it is agreed that:—

1. No carrier or party in possession of all or any of the property herein described, shall be liable for any loss thereof or damage thereto, by causes beyond its control; or by floods or by fire; or by quarantine; or by riots, strikes or stoppage of labor; or by leakage, breakage, chafing, loss in weight, changes in weather, heat, frost, wet or decay; or from any cause if it be necessary or is usual to carry such property upon open cars.

2. No carrier is bound to carry said property by any particular train or vessel, or in time for any particular market, or otherwise than with as reasonable despatch as its general business will permit. Every carrier shall have the right, in case of necessity, to forward said property by any railroad or route between the point of shipment and the point to which the rate is given.

3. No carrier shall be liable for loss or damage not occurring on its own road or its portion of the through route, nor after said property is ready for delivery to the next carrier or to consignee. The amount of any loss or damage for which any carrier becomes liable shall be computed at the value of the property at the place and time of shipment under this bill of lading, unless a lower value has been agreed upon or is determined by the classification upon which the rate is based, in either of which

events such lower value shall be the maximum price to govern such computation. Claims for loss, damage, or delays must be made in writing to the carrier at the port of export or to the carrier issuing this bill of lading within nine months after delivery of the property at said port (A), or, in case of failure to make such delivery, then within nine months after a reasonable time for such delivery has elapsed; and claims so made against said delivering or issuing carrier shall be deemed to have been made against any carrier which may be liable hereunder. Unless claims are so made the carrier shall not be liable.

4. All property shall be subject to necessary cooerage and baling at owner's cost. Each carrier over whose route Cotton is to be carried hereunder, shall have the privilege at its own cost, of compressing the same for greater convenience in handling and forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. No carrier shall be liable for differences in weights or for shrinkage of any grain or seed carried in bulk.

5. Property not removed by the person or party entitled to receive it within twenty-four hours after its arrival at destination "Port (A)," may be kept in the car, depot or place of delivery of the carrier, at the sole risk of the owner of said property, and there held subject to lien for all freight and other charges. Property taken from a station at which there is no regularly appointed agent shall be entirely at risk of owner until loaded into cars; and when received from private or other sidings, shall be at owner's risk until the cars are attached to trains.

6. No carrier hereunder will carry, or be liable in any way for, any documents, specie, or for any article of extraordinary value not specifically rated in the published classifications, unless a special agreement to do so, and a stipulated value of the articles are endorsed hereon.

7. Every party, whether principal or agent, shipping inflammable, explosive, or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

8. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped, and at the rates and under the rules provided for by published classifications.

9. If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the further conditions, that no carrier or party shall be liable for any loss or damage resulting from the perils of the lakes, sea or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances; or from collision, stranding, or other accidents of navigation; or from the prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have liberty to call at intermediate ports; to tow and be towed, and to assist vessels in distress, and to deviate for the purpose of saving life or property.

10. No carrier shall be liable for delay, nor in any other respect than as warehouseman, while the said property awaits further conveyance, and in case the whole or any part of the property specified herein be prevented by any cause from going from said port in the first steamer, of the ocean line above stated, leaving after the arrival of such property at said port, the carrier hereunder then in possession is at liberty to forward said property by succeeding steamer of said line, or, if deemed necessary, by any other steamer.

11. This contract is executed and accomplished, and all liability hereunder terminates, on the delivery of the said property to the steamer, her master, agent or servants, or to the steamship company, or on the steamer pier at the said port, and the inland freight charges shall be a first lien, due and payable by the steamship company.

II.—With respect to the service after delivery at the port (A) first above mentioned, and until delivery at the port (B) second above mentioned it is agreed that:—

1. The steamer shall have liberty to sail with or without pilots; that the carrier shall have liberty to convey goods in craft and/or lighters to and from the steamers at the risk of the owners of the goods; and, in case the steamer shall put into a port of refuge, or be prevented from any cause from proceeding in the ordinary course of her voyage, to transship the goods to their destination by any other steamer; that the carrier shall not be liable for loss or damage occasioned by fire from any cause or wheresoever occurring; by barratry of the master or crew; by enemies, pirates or robbers; by arrest or restraint of princes, rulers or people, riots, strikes, or stoppage of labor; by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, or unseaworthiness of the steamer, whether existing at time of shipment, or at the beginning of the voyage, provided the owners have exercised due diligence to make the steamer seaworthy; by heating, frost, decay, putrefaction, rust, sweat, change of character, drainage, leakage, breakage, vermin, or by explosion of any of the goods whether shipped with or without disclosure of their nature, or any loss or damage arising from the nature of the goods or the insufficiency of packages; nor for inland damage; nor for the obliteration, errors, insufficiency or absence of marks, numbers, address or description; nor for risk of craft, hulk, or transshipment; nor for any loss or damage caused by the prolongation of



the voyage, and that the carrier shall not be concluded as to correctness of statements herein of quality, quantity, gauge, contents, weight and value.

General Average payable according to York-Antwerp Rules. If the owner of the steamer shall have exercised due diligence to make said steamer in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence of the pilot, master or crew in the navigation or management of the steamer, or from latent or other defects, or unseaworthiness of the steamer, whether existing at time of shipment, or at the beginning of the voyage, but not discoverable by due diligence, the consignees or owners of the cargo shall not be exempted from liability for contribution in General Average, or for any special charges incurred, but, with the shipowner, shall contribute in General Average, and shall pay such special charges, as if such danger, damage or disaster had not resulted from such fault, negligence, latent or other defects or unseaworthiness.

2. That this shipment until delivery at the port (B) second above mentioned is subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled "An Act relating to the navigation of vessels, etc."

3. That the value of each package receipted for as above does not exceed the sum of one hundred dollars unless otherwise stated herein, on which basis the rate of freight is adjusted.

4. That the carrier shall not be liable for articles specified in Section 4281 of the Revised Statutes of the United States, unless written notice of the true character and value thereof is given at the time of lading and entered in the bill of lading.

5. That shippers shall be liable for any loss or damage to steamer or cargo, caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, whether such shipper be principal or agent; and such goods may be thrown overboard or destroyed at any time without compensation.

6. That the carrier shall have a lien on the goods for all freight, primages and charges, and also for all fines or damages which the steamer or cargo may incur or suffer by reason of the illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents.

7. That in case the steamer shall be prevented from reaching her destination by Quarantine, the carrier may discharge the goods into any depot or lazaretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

8. That the steamer may commence discharging immediately on arrival and discharge continuously, any custom of the port to the contrary notwithstanding, the Collector of the port being hereby authorized to grant a general order for discharge immediately on arrival, and if the goods be not taken from the steamer by the consignee directly they come to hand in discharging the steamer, the master or steamer's agent to be at liberty to enter and land the goods, or put them into craft or store at the owner's risk and expense, and when the goods shall be deemed delivered and steamers responsibility ended, but, the steamer and carrier to have a lien on such goods until the payment of all costs and charges so incurred.

9. That if on a sale of the goods at destination for freight and charges, the proceeds fail to cover said freight and charges, the carrier shall be entitled to recover the difference from the shipper.

10. That full freight is payable on damaged or unsound goods; but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

11. That in the event of claims for short delivery when the steamer reaches her destination, the price shall be the market price at the port of destination on the day of the steamer's entry at the Custom House, less all

charges saved, steamer being only responsible for such part of the goods as have been actually delivered to the steamer at the port (A) first above-mentioned, and steamer not liable for any loss or damage that may have occurred before such delivery, while agreeing to promptly present to inland carriers for account of owners of goods any claims for shortage or loss or damage that may have occurred before such delivery of goods at the port (A) first above-mentioned.

12. That merchandise on wharf awaiting shipment or delivery be at shipper's risk of loss or damage not happening through the fault or negligence of the owner, master, agent or manager of the steamer, any custom of the port to the contrary notwithstanding.

13. That this bill of lading, duly indorsed, be given up to the steamer's consignee in exchange for delivery order.

14. That freight prepaid will not be returned, goods lost or not lost.

15. That parcels for different consignees collected or made up in single packages addressed to one consignee, pay full freight on each parcel.

16. That freight payable on weight is to be paid on gross weight landed from ocean steamer, unless otherwise agreed to or herein otherwise provided, or unless the carrier elects to take the freight on the bill of lading weight, but inland freight and charges paid on wheat, peas, maize, or other grain, or seed, or other bulk articles, from point of shipment to seaboard, shall be paid by consignee at destination on the weight delivered on board ocean steamer.

17. It is stipulated that in case the whole or any part of the articles specified herein be prevented by any cause from going in the first steamer leaving after the arrival of such articles at said port, the carrier is only bound to forward them by succeeding steamers employed in the steamship line, or if deemed necessary by said carrier it may forward them in other steamers.

18. That the property covered by this bill of lading is subject to all conditions expressed in the regular forms of bills of lading in use by the steamship company at time of shipment, and to all local rules and regulations at port of destination not expressly provided for by the clauses herein.

19. That if the goods are destined beyond the port (B) second above mentioned, the transshipment to connecting carrier shall be at the risk of the owner of the goods, but at steamers expense, and that all liability of the Steamship Company hereunder terminates on due delivery to connecting carrier.

III.—With respect to the service after delivery at the port (B) second above mentioned, and until delivery at ultimate destination if destined beyond that port, it is agreed that:—

1. In case the regular steamship service to final port of delivery should for any reason be suspended or interrupted the carrier at the option of the owner or consignee of the goods, or the holder of the bill of lading, may forward the goods to the nearest available port, this to be considered a final delivery; or to store them at the port (B) second above mentioned at the risk and expense of the goods until regular service to final port of destination is opened again.

2. That the property shall be subject exclusively to all the conditions of the carrier or carriers completing the transit; the duty of notification above provided for shall fall exclusively within the obligation of the carrier completing the transit, and no prior carrier shall be responsible for the fulfillment of that obligation.

AND FINALLY, in accepting this bill of lading, the shipper, owner and consignee of the goods, and the holder of the bill of lading, agree to be bound by all of its stipulations, exceptions and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee or holder.

(ISSUING)

IN WITNESS WHEREOF, The Agent signing, on behalf of the said The.....  
Company, and of the said Ocean Steamship Company, or Ocean Steamer and her owner, sev-  
erally and not jointly, hath affirmed to.....Bills of Lading all of this tenor and  
date, one of which Bills being accomplished, the others to stand void.

Dated at.....this.....day of.....192....

.....Agent.  
On behalf of carriers severally but not jointly.

Note.—The following form of Ocean Abstract may be printed on the back of the Export Bill of Lading or may be printed on separate slips, for the use of agents at the seaboard, at the option of the issuing companies.

To be used exclusively by the agents at the seaboard and not by the maker of the bill of lading.	Bill of Lading No.....Lot No.....Contract No.....
	.....19....
	Through Rate.....£.....
	Ship's Proportion.....£.....
	Inland Proportion.....£.....
	Advance Charges.....£.....£.....
	Total .....£.....

### *Export Bills of Lading of carriers in Western Classification Territory.*

The Export Bills of Lading of Western Classification Territory carriers are the forms individually adopted by such carriers as is authorized by the Consolidated Freight Classification.<sup>6</sup>

### *Export Bills of Lading of carriers in Southern Classification Territory.*

The Export Bills of Lading of Southern Classification Territory carriers are the forms individually adopted by such carriers.

1. Extract from letter from the Interstate Commerce Commission, office of the Secretary, to Traffic Law Service Corporation, dated July 22, 1921, file no. 690895.
2. See Consolidated Freight Classification, No. 2, I. C. C. No. 46, pp. 40 to 43, incl., and also Rule 1, Section 1, (a) thereof.
3. Rule 1, Section 2, Consolidated Freight Classification No. 2, I. C. C. No. 46, effective April 1, 1921.
4. See Consolidated Freight Classification No. 2, I. C. C. No. 46, pp. 47 and 48, effective April 1, 1921.
5. See Consolidated Freight Classification No. 2, I. C. C. No. 46, pp. 44 to 46 incl., and also Rule 1, Sections (a) and (g), effective April 1, 1921.
6. Rule 1, Section 1 (g), Consolidated Freight Classification No. 2, I. C. C. No. 46, effective April 1, 1921.



2016-AA. "SHIPPER'S WEIGHT, LOAD, AND COUNT" PROVISION, ENDORSED ON BILL OF LADING.

The Federal Bill of Lading Act contains the following provisions governing the insertion of the clause "shipper's weight, load, and count" in bills of lading and contracts of shipment:<sup>1</sup>

Sec. 20. That when goods are loaded by a carrier such carrier shall count the packages of goods, if package freight, and ascertain the kind and quantity if bulk freight, and such carrier shall not, in such cases, insert in the bill of lading or in any notice, receipt, contract, rule, regulation, or tariff, "Shipper's weight, load, and count," or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him or in case of bulk freight and freight not concealed by packages the description made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

Sec. 21. That when package freight or bulk freight is loaded by a shipper and the goods are described in a bill of lading merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill of lading, such statements, if true, shall not make liable the carrier issuing the bill of lading, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may also by inserting in the bill of lading "Shipper's weight, load, and count," or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the goods described in the bill of lading: Provided, however, Where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier, upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carrier shall not in such cases insert in the bill of lading the words "Shipper's weight," or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

1. Federal Bill of Lading Act, approved August 29, 1916 (39 Stat. L. 538). Even prior to the enactment of the Federal Bill of Lading Act the Commission, upon complaint held that such a clause endorsed on bills of lading covering shipments loaded by the shipper and not checked by the carrier was not shown to be unreasonable or otherwise unlawful. In *Louisiana State Rice Milling Co. v. Morgan's L. & T. Rd. & S. S. Co.* (1915), 34 I. C. C. Rep. 511, *et seq.*, the Commission stated: "By its petition it alleges that the practice of the defendants provided for under the following rule, published as No. 23 in western classification No. 51, is unlawful and unreasonable:

"Freight loaded by shipper and not checked by carrier must be receipted for 'shipper's load and count.'"

"The first and principal contention made by complainant is that a bill of lading with this provision indorsed thereon is not such a receipt as shippers are entitled to and carriers required to furnish under the following provision of section 20 of the commerce act, known as the 'Carmack amendment':

"That any common carrier, railroad or transportation company receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefore and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed."

"In answer to this contention the defendants state that in each of the cities or towns where complainant's mills are located they have provided public facilities, consisting of freight depots and team tracks, at which they maintain the necessary force of employees to check shipments as loaded, issue for the freight they received and checked bills of lading without notation thereon of the statement 'Shipper's load and count,' and assume lawful responsibility therefor. They assert that not being required to establish or operate industry tracks, which are constructed primarily in the interest and for the convenience of the owning industry, prompted by various considerations such as the cost of land, availability of sources of supply, including raw material, saving in cartage, etc., carriers are within their lawful rights in attaching reasonable conditions or qualifications to receipts issued for shipments which are loaded by a shipper at the industry. In support of this contention they refer to our decision in the case of *Imperial Wheel Co. v. St. L. I. M. & S. Ry. Co.*, 20 I. C. C. 56, decided December 5, 1910, claiming that the question here involved is in principle and substance the same. In that case, wherein was attacked the carrier's refusal to make a connection with or operate over petitioner's

spur track leading to its industry, except upon condition that the carrier should be released from liability for loss and damage to the premises by fire which might be caused by sparks from its locomotives, the Commission held that where a carrier goes beyond its common-law duty in operating a spur track for the convenience of the shipper it may attach reasonable conditions to the undertaking.

"The prime if not the only purpose of the Carmack amendment was to make the initial carrier receiving property for interstate transportation liable to the lawful holder of a receipt or bill of lading issued therefor on account of any loss, damage, or injury to such property caused by it or by any other common carrier over whose lines the same might pass. Prior to that time the shipper or consignee was put to the trouble and expense of attempting to locate among those composing the through line of movement the particular carrier responsible for any loss or damage occurring to the shipment and of endeavoring to collect from it. It was generally difficult and often impossible to definitely ascertain the particular carrier in through line which had caused the loss or damage, and it was the inadequate opportunity afforded under these conditions for enforcing justice that led to the enactment of this amendment of the law. It did not undertake directly to prescribe or limit the conditions or provisions of bills of lading, but operated to render void to the extent stated any attempted limitation of the liability of the initial carrier to the shipper.

"The practice, the legality of which is here in question, had been followed generally by carriers long before the passage of the Carmack amendment and was a matter of common knowledge at that time. In the absence of anything therein, contained specifically condemning this practice, or declaring unlawful a receipt or bill of lading containing the so-called 'shipper's load and count' provision, it can not be held that that act overturned it.

"Since this case was submitted there has been enacted the so-called Cummins amendment to the provision of section 20 of the act hereinbefore quoted, which has the effect of invalidating all limitations of carriers' liability for loss, damage, or injury to property transported caused by the initial carrier or by another carrier to which it may be delivered or which may participate in the transportation. We do not think, however, that the 'shipper's load and count' provision here in question is such a limitation upon carriers' liability as is contemplated by the prohibitions of this amendment. It does not appear that this rule operates to limit the liability of the carrier for the full value of the property shipped but, in its application to a claim for loss because of alleged failure to deliver the whole amount transported, has the effect of placing the burden upon the shipper who loads on his private sidetrack to prove that the amount specified was loaded and that a less amount was taken out of the car by the consignee; whereas in the case of a receipt not so qualified the burden is upon the carrier to prove that the amount specified in the bill of lading was either not in fact loaded, or was delivered, or otherwise to settle for the full value thereof."

#### 2016-BB. ACT OF GOD OR OTHER VIS MAJOR.

An unusually heavy snow storm in February is not an act of God within the meaning of a bill of lading provision excusing a carrier from damages resulting therefrom, although a delay in the transportation of a shipment caused thereby, where the carrier made all reasonable efforts to obtain men to clear its tracks, may be excused by reason thereof.<sup>1</sup>

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1. *Fish v. Erie Rd. Co.* (1916), 156 N. Y. Supp. 546.

#### 2016-CC. ACCIDENTS OR DELAYS FROM UNAVOIDABLE CAUSES.

Under a bill of lading relieving from liability for loss "by accidents or delays from unavoidable causes," unusual and unexpected congestion at place of destination due to teamsters at destination, who are accustomed to handling shipments, being occupied in removing freight already there, held not to exonerate the initial carrier from liability for shipment destroyed by fire while sidetracked nine miles from destination upon tracks of a connecting carrier.<sup>1</sup>

Under the "Carmack Amendment" the liability of the initial carrier for goods consumed by fire while side-tracked along the line of a connecting carrier before reaching destination is not limited to loss caused by some affirmative act of the connecting carrier.<sup>2</sup>

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1. *Yazoo & M. V. Rd. Co. v. Craig* (Miss. 1918), 70 So. 102.

2. *Ibid.*



2016-DD. PROVISIONS LIMITING AND EXEMPTING CARRIERS FROM LIABILITY  
FOR NEGLIGENCE.

A bill of lading stipulating against liability for the carrier's negligence is invalid and without effect if the transportation is interstate in character.<sup>1</sup>

A carrier may not, by valuation agreement with the shipper, limit its liability in case of the loss by negligence of an interstate shipment to less than the real value thereof unless the shipper is given a choice of rates based on valuation.<sup>2</sup>

A limitation of liability of an interstate carrier based upon the declared value of a shipment, is not a contract exempting the carrier from its negligence.<sup>3</sup>

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1. *Bivens Bros. v. Atlantic C. L. Rd. Co.* (N. C. 1918), 97 S. E. 215.

2. *Union P. Rd. Co. v. Burke* (1921), .... U. S. ...., .... Sup. Ct. Rep. ...., 65 L. Ed. 318.

3. *Enderstein v. Atchison, T. & S. F. Ry. Co.* (N. M. 1916), 157 Pac. 670.

2016-EE. TIME FOR GIVING NOTICE OF AND FILING OF CLAIMS WITH CARRIERS, AND FOR THE INSTITUTION OF SUITS FOR RECOVERY OF DAMAGES UNDER SECTION 20 OF THE ACT.

See "*Time for giving notice of and filing of claims with carriers, and for the institution of suits for recovery of damages under Section 20 of the Act,*" *Section 2019, post.*

2016-FF. VALIDITY OF LIMITED-LIABILITY PROVISIONS IN CLASSIFICATIONS AND TARIFFS OR RATE SCHEDULES.

See "*Validity of limited-liability provisions in classifications and tariffs or rate schedules,*" *Section 2017, post.*

2016-GG. LIMITATION OF LIABILITY OF CARRIER ON TRAFFIC DESTINED TO OR TAKEN FROM A NON-AGENCY STATION.

The case of *Yazoo & M. V. Rd. Co. v. Nichols & Co.*<sup>1</sup> involved the construction of the following clause in the carrier's bill of lading; "Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels and when received or delivered on private or other sidings, wharves, or landings, shall be at owners' risk until the cars are attached to and after they are detached from trains." The court held that outgoing loaded cars for which bills of lading have been issued, and which, to await the carrier's convenience, are left standing on a semi-public siding at a station where there is a regularly appointed agent, are not covered by the above provision in the bill of lading.

In delivering the opinion of the Supreme Court, Mr. Justice Brandeis stated: "Whether goods destroyed, lost, or damaged while at a railroad station were then in the possession of the carrier as such, so as to subject it to liability, in the absence of negligence, had, before the adoption of the uniform bill of lading, been the subject of much litigation. At stations where there is a regularly appointed agent the

field for controversy could be narrowed by letting the execution of a bill of lading or receipt evidence delivery to and acceptance by the carrier; and by letting delivery of goods to the consignee be evidenced by surrender of the bill or execution of a consignor's receipt. But at nonagency stations this course is often not feasible. There the field for controversy as to the facts was particularly inviting and the reasons persuasive for limiting the carrier's liability. Local freight trains are often late. Shippers or consignee cannot be expected to attend on their arrival. Less than carload freight awaiting shipment must ordinarily be left on the station platform, to be picked up by the passenger train, and lots arriving must be dropped on the platform, to be called for the consignee. At such stations the situation in respect to carload freight is not materially different. And this is true whether the car be loaded for shipment on the public siding or on a neighboring private siding, and whether the arriving loaded car be shunted onto a public siding or a private siding. There carload, as well as less than carload, freight, whether outgoing or incoming, must ordinarily be left unguarded for an appreciable time. It is not unreasonable that shippers at such stations should bear the risks naturally attendant upon the use. The reason why an agent is not appointed is that the traffic to and from the station would not justify the expense. The station is established for the convenience of shippers customarily using it. And the paragraph here in question was apparently designed to shift the risk from the carrier to shipper or consignee, of both classes of freight. It does so in the case of less than carload freight by having the carrier's liability begin when the goods are put on board cars, and end when they are taken off. It does so in the case of carload freight by limiting liability to the time when the car is attached to or detached from the train. But, at a station where there is a regularly appointed agent it would be obviously unreasonable to place upon the shipper, after a bill of lading has issued, the risks attendant upon the loaded car remaining on the public siding because it has not yet been convenient for the carrier to start it on its journey. It would likewise be unreasonable to place upon the consignee at such a station the risk attendant upon the arriving car's remaining on the siding before there has been notice to the consignee of arrival and an opportunity to accept delivery. The situation there would be practically the same whether the loaded cars were left standing on a public siding or on a siding to a private industry on the railroad's right of way, as in *Swift & Co. v. Hocking Valley R. Co.*, 243 U. S. 281, 61 L. ed. 722, 37 Sup. Ct. Rep. 287, or on a siding partly on the railroad's right of way, and partly on private land, as in *Chicago & N. W. R. Co. v. Ochs*, 249 U. S. 416, 63 L. ed. 679, P. U. R. 1919D, 498, 39 Sup. Ct. Rep. 343, and *Lake Erie & W. R. Co. v. State Public Utilities Commission*, 249 U. S. 422, 63 L. ed. 684, P. U. R. 1919D, 459, 39 Sup. Ct. Rep. 345, when the siding is, either by state law or by agreement and in fact, a part of the carrier's terminal system.

"If we approach the construction of the second clause of the last paragraph of section 5 of the uniform bill of lading in the light of this practical situation all doubt as to its meaning, must vanish. It could not have been intended that at stations where there are regularly appointed agents outgoing loaded cars for which bills of lading have issued, and which are left standing on a siding solely to await the carrier's convenience, are to be at the risk of the shipper. And this is



true whether the siding be a strictly public one or a semipublic one, as in the *Ochs and Lake Erie & W. R. Co. Cases, supra*, and the case at bar; or whether it be a siding privately used, but owned by the railroad, as in the *Swift & Co. case, supra*, and in such cases that the spur extends over land not part of the carrier's right of way is immaterial. The construction contended for by the railroad, even if not applied to team tracks in the freight yards of a great city, would place all loaded cars arriving elsewhere at the owner's risk from the moment they were detached from a train, although the consignee had not even been notified of their arrival.

"It is clear that the immunity conferred by the last paragraph of section 5 does not apply to loaded cars on the spur here involved. Whether the same rule should apply to cars on strictly private industry tracks effectively separated from the terminal, and exclusively under private control like the industry tracks involved in *Bers v. Erie R. Co.*, 225 N. Y. 543, 122 N. E. 456, we have no occasion to determine. Affirmed."

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1. *Yazoo & M. V. Rd. Co. v. Nichols & Co.* (1921), .... U. S. ...., .... Sup. Ct. Rep. ...., 65 L. Ed. 642.

## 2017. Validity of limited-liability provisions in classifications and tariffs or rate schedules.

### 2017-A. LIMITED-LIABILITY PROVISIONS OF TARIFFS OR RATE SCHEDULES IN VIOLATION OF SECTION 20 OF THE ACT, UNLAWFUL AND VOID.

Section 20 (11) of the Interstate Commerce Act (*as amended March 4, 1915, and August 9, 1916*), provides that the initial carrier shall be liable for the full actual loss, damage, or injury to the property caused by it or by its connecting carriers notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and that any such limitation, without respect to the manner or form in which it is sought to be made is declared to be unlawful and void.<sup>1</sup>

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1. For the Commission's analysis of the limitation of liability of rules and regulations governing the transportation of perishable traffic, see "Perishable Freight Investigation," (1920), 56 I. C. C. Rep. 449, 550, et seq.

### 2017-B. TARIFFS CONTAINING RATES DEPENDENT UPON DECLARED VALUE MAY BE AUTHORIZED OR REQUIRED BY THE INTERSTATE COMMERCE COMMISSION.

See "*Rates dependent upon a declared or released valuation as authorized or required by the Interstate Commerce Commission*," *Section 2013, ante*.

### 2017-C. TARIFFS CONTAINING RELEASED-VALUATION RATES TO SHOW THE ORDER OF THE INTERSTATE COMMERCE COMMISSION.

Section 20 (11) of the Interstate Commerce Act provides that any tariff schedule which may be filed with the Interstate Commerce Commission pursuant to its order requiring or authorizing rates dependent upon declared value shall contain specific reference thereto.

2017-D. EFFECT OF FAILURE TO POST TARIFF ON VALIDITY OF LIMITED-LIABILITY PROVISION.

The omission to post the rate sheet of an express company on file with the Interstate Commerce Commission does not invalidate a limitation of the express company's liability by its contract of interstate shipment to an agreed value made to adjust the rate.<sup>1</sup>

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1. *American Express Co. v. United States Horse Shoe Co.* (1917), 244 U. S. 53, 37 Sup. Ct. Rep. 595, 61 L. Ed. 990.

2017-E. VALIDITY OF TARIFF RULES DENYING PRIVILEGE OF INSPECTION TO THE CONSIGNEE.

In *New York Mercantile Exchange v. Baltimore & O. Rd. Co.*<sup>1</sup> the Commission held that when cases of eggs are received by the carrier at the shipping point and are receipted for by the carrier as in apparent good order (contents and condition of contents of package unknown) and arrive at destination in the same apparent condition, showing no external evidence of damage, tariff rules not according to consignee the right to examine the contents of the cases prior to delivery and requiring of consignees receipt for said cases as in apparent good order (contents and condition of contents of package unknown) are not unjust or unreasonable nor shown of record to be unduly prejudicial to the consignee of eggs in the metropolitan district of New York.

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1. *New York Mercantile Exchange v. Baltimore & O. Rd. Co.* (1915), 36 I. C. C. Rep. 156.

2017-F. LIMITED-LIABILITY PROVISIONS OF CARRIERS' CONSOLIDATED FREIGHT CLASSIFICATION.

In furtherance of the carriers' right to limit their common-law liability by contract, railroads and express companies have generally provided special contracts for the transportation of certain property like live stock, circus outfits, and the performance of other special services, wherein their liabilities were agreed upon at a fixed amount or limited to a fixed amount in consideration of a given rate. Carriers also have generally maintained lower rates dependent upon a declared or released valuation.

The carriers' Consolidated Freight Classification No. 1, I. C. C. No. 46, provides a schedule of reduced ratings conditioned upon the use of the carriers' bills of lading and shipping contracts, which contain certain limited-liability provisions and which provide that where the consignor gives notice to the agent of the forwarding carrier that he elects not to accept all the terms and conditions of the carriers' bills of lading or contracts of shipment carrying the limited liability, but desires a common carrier's liability service, the rate charged therefor will be ten per cent higher than the rate charged for property shipped subject to all the terms and conditions of the carriers' bills of lading and contracts of shipment.

The Uniform Bill of Lading applicable to the Official Classification and Western Classification Territories, and the Standard Bill of Lading and individual lines' bills of lading and contracts of shipment used in Southern Classification Territory, all contain a set of terms and conditions which limit the carrier's common-law liability. In this man-



ner, the shipper is given a choice of rates based upon difference in liability; one, that shown in the Classification and carrying a limited liability, and the other, the ten per cent higher rate in consideration of the shipper enjoying the liability at common law, and by the laws of the United States and of the several States in so far as they apply, but subject to the terms of the carrier's limited-liability bill of lading in so far as they are not inconsistent with such common-carrier's liability.

*Theoretically*, the carriers' ratings as contained in the Consolidated Freight Classification are based upon the carriers' common-law liability, and ten per cent lower rates are accorded to the shipper in consideration of the property being transported under a limited-liability service. However, in view of the fact that most traffic moves under the limited-liability service and only occasionally a shipper elects to have his goods transported under the common-law liability, it is obvious that for convenience and to facilitate computation of rates on the majority of traffic the carriers have stated the ratings in the Classification in inverse order. It is a matter of common knowledge that the great bulk of freight is transported under bills of lading limiting the common-law liability of the carrier. Hence, where the difference between two rates, one applicable to limited liability and the other to full common-law liability, is fixed upon a horizontal percentage basis, it would seem a convenient method to state specifically and in detail only the rates for limited liability, and then state generally the percentage of increase over those rates where the goods are transported subject to full common-law liability.<sup>1</sup>

This dual system of rate assessment conditioned upon the character of the carrier's liability was in vogue long before the enactment of the "Carmack Amendment" of June 29, 1906.

Originally, the differential between rates carrying an unlimited or common-law liability and those which provide a limited liability was twenty per cent, but this differential was reduced to ten per cent at the suggestion of the Interstate Commerce Commission as early as May 14, 1908, the Commission holding that the differential should exactly measure the additional insurance risk which carrier assumed when the liability is unlimited, and that an increased charge of twenty per cent is manifestly out of all proportion to the larger risk involved, and that its virtual effect is to restrict the public to rates calling for limited liability.<sup>2</sup>

The obvious effect of the "Cummins Amendment" of March 4, 1915, to Section 20 of the Interstate Commerce Act providing for liability for the full actual loss, damage, or injury to the property transported notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission, is to nullify the dual system of classification and rate making as above described as far as it relates to interstate and foreign commerce.

As stated by the Commission in *In Re The Cummins Amendment*<sup>3</sup> "The more important points which seem to be surrounded with the most doubt and upon which opinions so far expressed most sharply conflict, are:

"1. If no changes are made in the existing shipping contracts and rate schedules, will the higher rates provided therein automati-

cally become lawfully applicable upon the date upon which the amendment takes effect?

"As we have seen, the Carmack amendment, adopted in 1906, provided that no contract, receipt, rule, or regulation should exempt the carrier from the liability thereby imposed. As has been said, no effort was made to change rates because of that amendment to the act. The classifications or rate schedules provide that unless the terms of certain bills of lading are accepted higher rates will apply. The terms of the bill of lading could be modified or changed to any extent without automatically changing any rate. Prior to 1913 many of the limitations contained in bills of lading or other shipping contracts were treated as if they did not exist, and it was never suggested that the validity or invalidity of any such provision affected the rate.

"It is contrary to all canons of construction to hold that an act of Congress produces a result not intended by Congress unless the express language of the act compels such a construction. There is nothing in the expressed terms of this act or in the history of this legislation that shows any intent or purpose on the part of Congress to affect in any degree the existing rates charged by carriers for transporting property. The legislation is aimed at specified contracts and declares them to be unlawful. The lawful rates on file at this time, therefore, are the rates providing for the limited liability. The Cummins amendment, by making contracts limiting liability for loss caused by the carriers unlawful, does not destroy these rates, but they remain in effect and are lawfully applicable, for the 10 per cent increased rates are merely additional and cannot stand in and of themselves.

"Applying correct rules of interpretation, the Cummins amendment does not automatically bring into effect the increased rates named in the classifications and tariff publications as applicable to shipments which are not made subject to the terms of the uniform or carrier's bill of lading."

Therefore, insofar as interstate and foreign commerce are concerned, the ratings provided in the Consolidated Freight Classification have automatically attached to them, by virtue of the "Cummins amendment" the carrier's full common-law liability as imposed by Section 20 of the Act; and all provisions with reference to limitation of liability and which seek to impose ten per cent higher ratings when the property is not shipped subject to the carrier's terms and conditions, are null and void.

It should be noted, however, that the Consolidated Freight Classification is filed with numerous State regulating tribunals throughout the Official, Southern, and Western Classification Territories for use on intrastate traffic, and for this reason, the dual system of ratings provided in the consolidated Freight Classification is still lawful with respect to purely intrastate traffic, except insofar as they may be contrary to the laws, rules, and regulations of the several States in which such Classification is in use.

1. *Mannheim Insurance Co. v. Erie & W. Transportation Co.* (1898), 72 Minn. 357, 75 N. W. 602.
2. *In the Matter of Released Rates* (1908), 13 I. C. C. Rep. 550. The case of *Missouri, K. & T. Ry. Co. v. Harriman Bros.* (1913), 227 U. S. 657, 33 Sup. Ct. Rep. 397, 57 L. Ed. 690, involved a twenty per cent differential between rates on live stock and the validity of such contract was sustained by the United States Supreme Court. For the construction of a ten percent differential live stock contract, see *Boston & M. Rd. Co. v. Piper*, (1918), 246 U. S. 439, 38 Sup. Ct. Rep. 354, 62 L. Ed. 820.
3. *In Re The Cummins Amendment* (1915), 33 I. C. C. Rep. 682.



2017-G. DEDUCTIONS FOR NATURAL SHRINKAGE AND UNAVOIDABLE WASTE  
ON SHIPMENTS OF GRAIN.

See "*Damages and Reparation—Claims between Shippers and Carriers*," Chapter 28, *post*.

2017-H. "FILL" ALLOWANCES DEDUCED FROM HOOF-SELLING WEIGHTS OF  
LIVE STOCK AS BASES FOR ASSESSMENT OF TRANSPORTATION  
CHARGES.

See "*Damages and Reparation—Claims between Shippers and Carriers*," Chapter 28, *post*.

2017-I. TOLERANCE PROVISIONS IN PUBLISHED TARIFFS GOVERNING SHIP-  
MENTS OF COAL.

See "*Damages and Reparation—Claims between Shippers and Carriers*," Chapter 28, *post*.

2017-J. RULES OF CARRIER, UNAUTHORIZED BY ITS TARIFFS, WHEREUNDER  
SHIPMENTS ARE REFUSED UNLESS THE DECLARED VALUE THEREOF  
IS MARKED ON THE PACKAGE BY THE SHIPPER, UNLAWFUL.

In *Viscose Co. v. American Railway Express Co.*<sup>1</sup> the Commission stated:

"The rules of defendant requiring the value to be marked on packages are not on file with us, but are published in a book of general instructions to employees and read as follows:

"323. (a) Receipts to show value: Shippers must be required to state the nature of the shipments and to declare the value thereof (except on ordinary live stock), which value must be inserted in 'Value' space on the receipt and marked on the package. Shipper's declaration of value may be made by notation, 'Not exceeding \$50.00' or 'Not exceeding 50c per pound, actual weight.' \* \* \* If shipper or his representative declines to declare value and sign receipt or agreement, the shipment must be refused.

"6-A. \* \* \* We wish to impress upon all agents, receiving clerks and vehicle-men the need of assuring themselves at the time of receipting for shipments: \* \* \* that the declared value is marked on all shipments weighing 100 lbs. or less and valued over \$50.00, and on all shipments weighing over 100 lbs., and valued at over 50 cents per lb.

"Complainant was not required to mark the value upon packages at Marcus Hook until November 10, 1919, and at Roanoke until after June 21, 1920, the date of the first hearing in this case. When shipments comprised more than one package complainant was required, at Marcus Hook, to show the value of each package; at Roanoke it was required merely to show the total value. It is asserted by defendant that all shippers at both stations are now required to mark upon packages the total value only.

"The value of the shipments and the prices made its customers by complainant vary according to the season of the year, the quantity and quality shipped, and other circumstances. It has been complainant's practice to furnish defendant a duplicate receipt showing the total value of each shipment and other pertinent information. Complainant considers it unnecessary to show the value on the package when it can be ascertained from the receipt, and asserts that valuation marks on packages might induce pilfering or otherwise operate

to its detriment. The value, however, is also shown on the waybill attached to the shipment where it is subject to observation. If shippers object to showing the value of their shipments they may use the code which defendant has adopted for that purpose.

"Since July 1, 1920, defendant has adopted the practice generally of retaining duplicate express receipts. Although it is possible to waybill shipments from the information shown in the receipts, it has been and is defendant's practice to waybill them from the marks on the packages, after weighing. When the charges are billed 'collect' the amount collectible is not shown in the waybill, but is computed by the agent at destination from information shown in the waybill and on the package. Practically all of complainant's shipments are made without prepayment of charges. Defendant asserts that cancellation of the rules assailed would be detrimental to efficiency in the handling of its business and might result in the application of improper charges where the waybills covering 'collect' shipments are lost or mutilated in transit, and that enforcement of the rule is a safeguard against theft and pilferage, as shipments of high value are given more than ordinary care while in transit. Each employee who handles such shipments is required to receipt for the packages, thereby reducing losses to a minimum.

"As early as 1866 a rule of the express companies required the value of shipments, if exceeding \$50, to be marked on the package. In our order of July 24, 1913, in *Express Rates, Practices, Accounts, and Revenues*, 28 I. C. C. 131, the following classification provision was prescribed:

"Shippers must be required to state the nature of the shipment, to declare the value thereof, which value, when given, must be inserted in the receipt, marked on the package, and entered on the way-bill.

Prior to July 1, 1917, this requirement was published as a part of rule 2 (b) of the express classification, and was filed with us; but on that date the portion of the rule which provided that the value must be marked on the package and entered on the waybill was omitted from the classification.

"The rules quoted from defendant's book of instructions authorize refusal of shipments when the shipper or his representative declines to disclose the value and to sign the prescribed receipt or agreement, but not when he merely fails or refuses to mark the value upon packages. Whether, under these rules, the duty of so marking the packages devolves upon the shipper or upon defendant's employees is uncertain. By section 1 of the act carriers are required, among other things, to establish, observe, and enforce just and reasonable regulations and practices affecting 'the manner and method of presenting, marking, packing and delivering property for transportation.' We have held in several cases involving rules of freight classifications or tariff that carriers reasonably may require shippers to properly mark their shipments, and in one such case, *Colorado Tent & Awning Co. v. B. & M. R. R. Co.*, 21 I. C. C., 565, we said:

"Reasonable and pertinent rules are as essential a part of the tariff as the rates which are governed or limited by their application.

"Clearly defendant's rules and practice herein assailed limit, and in fact, completely nullify the application of rates which otherwise would be available to complainant under defendant's published tariffs. The facts of record seem to show that it would be in the interest of



operating efficiency and not unreasonable to require shippers to mark the value on packages, when shipments are subject to rates based on valuation. But if defendant desires to enforce such a regulation, it should be plainly stated in its schedules and uniformly observed."

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1. *Viscose Co. v. American Railway Express Co.* (1921), 62 I. C. C. Rep. 32, 33, *et seq.*

2017-K. VALIDITY OF LIMITED-LIABILITY PROVISIONS IN RECEIPTS, BILLS OF LADING, AND CONTRACTS OF SHIPMENT IN INTERSTATE AND FOREIGN COMMERCE.

See "*Validity of limited-liability provisions in receipts, bills of lading, and contracts of shipment in interstate and foreign commerce*," Section 2016, *ante*.

2018. Constitutionality of provisions of Section 20 of the Act governing the initial carrier's liability, and limitation of carrier's liability for loss, damage, or injury to property transported in interstate and foreign commerce.

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2018-A. CONSTITUTIONALITY OF STATUTE MAKING THE INITIAL CARRIER LIABLE FOR LOSS, DAMAGE, OR INJURY TO PROPERTY OCCURRING ON THE LINES OF CONNECTING CARRIERS.

The power of Congress under the interstate commerce clause of the Constitution is plenary, and without limitation other than those prescribed in the Constitution itself.<sup>1</sup>

The burden of proof is upon those who affirm the unconstitutionality of an act of Congress to show clearly that it is in violation of the Constitution; it is not sufficient to merely raise a doubt.<sup>2</sup>

The provision of Section 20 of the Interstate Commerce Act of Feb. 4, 1887 \* \* \* as amended by the Hepburn Act of June 20, 1906 \* \* \* which makes a common carrier receiving property for transportation from a point in one state to a point in another liable for all loss or damage to such property whether it occurred on its own line or on connecting lines, and provides that no contract, receipt, rule or regulation shall exempt it from such liability, is not unconstitutional as interfering with the liberty of contract, or as depriving the carrier of its property without due process of law, but is within the power of Congress under the commerce clause of the Constitution.<sup>3</sup>

In *Atlantic C. L. Rd. Co. v. Riverside Mills*,<sup>4</sup> in which the constitutionality of Section 20 of the Interstate Commerce Act was sustained, Mr. Justice Lurton in delivering the opinion of the court stated: "The goods of the defendants in error were lost by a connecting carrier to whom they had been safely delivered. Though received for a point beyond its own line, and for a point on the line of a succeeding carrier, there was no agreement for their safe carriage beyond the line of the plaintiff in error, but upon the contrary, an express agreement that the initial carrier should not be liable for a 'loss or damage not occurring on its own portion of the route.' Such a provision is not a contract

for exemption from a carrier's liability as such, but a provision making plain that it did not assume the obligation of a carrier beyond its own line, and that each succeeding carrier in the route was but the agent of the shipper for a continuance of the transportation. It is therefore obvious that at the common law an initial carrier under such a state of facts would not be liable for a loss through the fault of a connecting carrier to whom it had, in due course, safely delivered the goods for further transportation. *Ogdensburg & L. C. R. Co. v. Pratt*, 22 Wall. 123, 22 L. ed. 827; *Myrick v. Michigan C. R. Co.*, 107 U. S. 102, 27 L. ed. 325, 1 Sup. Ct. Rep. 425; *Southern P. R. Co. v. Interstate Commerce Commission*, 200 U. S. 536, 554, 50 L. ed. 585, 593, 26 Sup. Ct. Rep. 330. Liability is confessedly dependent upon the provision of the act of Congress regulating commerce between the states, known as the Carmack amendment of June 29, 1906 \* \* \*.

"The 20th section of the act of February 4, 1887 \* \* \* as changed by the Carmack amendment reads as follows:

"That any common carrier, railroad, or transportation company receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property, caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered, or over whose line or lines such property may pass, and no contract, receipt, rule or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed. Provided, that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

"That the common carrier, railroad or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad or transportation company on whose line the loss, damage, or injury shall have been sustained, the amount of such loss, damage or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof.

"The power of Congress to enact this legislation has been denied, first, because it is said to deprive the carrier and the shipper of their common-law carrier to make a just and reasonable contract in respect to goods to be carried to points beyond the line of the interstate carrier; and, second, that in casting liability upon the initial carrier for loss or damage upon the line of a connecting carrier, the former is deprived of its property without due process of law.

"The indisputable effect of the Carmack amendment is to hold the initial carrier engaged in interstate commerce and 'receiving property for transportation from a point in one state to a point in another state' as having contracted for through carriage to the point of destination, using the lines of connecting carriers as its agents.

"Independently of the Carmack amendment the carrier, when tendered property for such transportation, might elect to contract to carry to destination, in which case it necessarily agreed to do so through the agency of other and independent carriers in the line; or, it might elect to carry safely over its own lines only, and then deliver to the next carrier, who would then become the agent of the shipper. In the first case the receiving carrier's liability as carrier extends over the whole route, for, on obvious grounds, the principal is liable for the acts of its agent. In the other case its carrier liability ends at its own terminal, and its further liability is merely that of a forwarder. Having this power to make the one or the other contract, the only question which has occasioned a conflict in the decided cases was whether it, in the particular case, made the one or the other.

"The general doctrine accepted by this court, in the absence of legislation, is, that a carrier, unless there be a special contract, is only



bound to carry over its own line, and then deliver to a connecting carrier. That such an initial carrier might contract to carry over the whole route was never doubted. It is equally indisputable that if it does so contract, its common-law carrier liability will extend over the entire route. *Ohio & M. R. Co. v. McCarthy*, 96 U. S. 258, 266, 24 L. ed. 693, 696; *Ogdensburg & L. C. R. Co. v. Pratt*, supra; *Northern P. R. Co. v. American Trading Co.*, 195 U. S. 439, 49 L. ed. 269, 25 Sup. Ct. Rep. 84; *Muschamp v. Lancaster & P. R. Co.*, 8 Mees. & W. 421.

“The English cases beginning with *Muschamp v. Lancaster & P. R. Co.*, supra, decided in 1841, down to *Bristol & E. R. Co. v. Collins*, 7 H. L. Cas. 194, have consistently held that the mere receipt of property for transportation to a point beyond the line of the receiving carrier, without any qualifying agreement, justified an inference of an agreement for through transportation, and an assumption of full carrier liability by the primary carrier. The ruling is grounded upon considerations of public policy and public convenience, and classes the receipt of goods so designated for a point beyond the carrier line as a holding out to the public that the carrier has made its own arrangements for the continuance by a connecting carrier of the transportation after the goods leave its own line. There are American cases which take the same view of the question of evidence thus presented. Some of them *S. R. Co. v. Mt. Vernon Co.*, 84 Ala. 175, 4 So. 356; *Central R. Co. v. Hasselkus*, 91 Ga. 384, 44 Am. St. Rep. 37, 17 S. E. 838; *Beard v. St. Louis, A. & T. H. R. Co.*, 79 Iowa 531, 44 N. W. 803; *Kyle v. Laurens R. Co.*, 10 Rich. L. 382, 70 Am. Dec. 231; *Erie R. Co. v. Wilcox*, 84 Ill. 240, 25 Am. Rep. 451; *East Tennessee & V. R. Co. v. Rogers*, 6 Heisk. 143, 19 Am. Rep. 589.

“Upon the other hand, many American courts have repudiated the English rule which holds the carrier to a contract for transportation over the whole route, in the absence of a contract clearly otherwise, and have adopted the rule that unless the carrier specifically agrees to carry over the whole route, its responsibility as a carrier ends with its own line; and that, for the continuance of the shipment, its liability is only that of a forwarder. The conflict has therefore been one as to the evidence from which a contract for through carriage to a place beyond the line of the receiving carrier might be inferred.

“In this conflicting condition of the decisions as to the circumstances from which an agreement for through transportation of property designated to a point beyond the receiving carrier's line might be inferred, Congress, by the act here involved, has declared, in substance, that the act of receiving property for transportation to a point in another state, and beyond the line of the receiving carrier, shall impose on such receiving carrier the obligation of through transportation, with carrier liability throughout. But this uncertainty of the nature and extent of the liability of a carrier receiving goods destined to a point beyond its own line, was not all which might well induce the interposition of the regulating power of Congress. Nothing has perhaps contributed more to the wealth and prosperity of the country than the almost universal practice of transportation companies to co-operate in making through routes and joint rates. Through this method, a situation has been brought about by which, though independently managed, connecting carriers become in effect one system. This

practice has its origin in the mutual interests of such companies and in the necessities of an expanding commerce.

“In the leading case of *Muschamp v. Lancaster & P. R. Co.*, cited above, Lord Abinger defended the inference of a contract for through carriage from the mere receipt of a package destined to a point beyond the line of the receiving carrier upon the known practice in his day of such carriers. Upon this subject, in speaking of connecting lines of railway, he said: ‘These railway companies, though separate in themselves, are in the habit, for their own advantage, of making contracts, of which this was one, to convey goods along the whole line, to the ultimate terminus, each of them being agents of the other to carry them forward, and each receiving their share of the profits from the last.’

“The tenth clause of the conditions annexed to this bill of lading, and shown elsewhere, affords a fair illustration of the customary methods of connecting carriers to co-operate for their mutual benefit in carrying on transportation begun by one which must be continued by other lines over which the thing to be transported must go. The receiving carrier makes the rate and the route, and as the agent of every such connecting carrier executes a contract which is to bind each of them, ‘severally, but not jointly,’ one of the terms of the agreement being that each carrier shall be liable only for loss or damage occurring on its own line. Through this well known and necessary practice of connecting carriers there has come about, without unity of ownership or physical operation, a singleness of charge and a continuity of transportation greatly to the advantage of the carrier, and beneficial to the great and growing commerce of the country.

“Along with this singleness of rate and continuity of carriage there grew up the practice by receiving carriers, illustrated in this case, of refusing to make a specific agreement to transport to points beyond its own line, whereby the connecting carrier, for the purpose of carriage, would become the agent of the primary carrier. The common form of receipt, as the court may judicially know, is one by which the shipper is compelled to make with each carrier in the route over which his package must go a separate agreement limiting the carrier liability of each separate company to its own part of the through route. As a result the shipper could look only to the initial carrier for recompense for loss, damage, or delay occurring on its part of the route. If such primary carrier was able to show a delivery to the rails of the next succeeding carrier, although the packages might and usually did continue the journey in the same car in which they had been originally loaded, the shipper must fail in his suit. He might, it is true, then bring his action against the carrier so shown to have next received the shipment. But here, in turn, he might be met by proof of safe delivery to a third separate carrier. In short, as the shipper was not himself in possession of the information as to when and where his property had been lost or damaged, and had no access to the records of the connecting carriers who, in turn, had participated in some part of the transportation, he was compelled in many instances to make such settlement as should be proposed.

“This burdensome situation of the shipping public in reference to interstate shipments over routes including separate lines of carriers was the matter which Congress undertook to regulate. Thus,



when this Carmack amendment was reported by a conference committee, Judge William Richardson, a congressman from Alabama, speaking for the committee of the matter which it was sought to remedy, among other things, said:

“‘One of the great complaints of the railroads has been—and, I think, a reasonable, just, and fair complaint—that when a man made a shipment, say, from Washington, for instance, to San Francisco, California, and his shipment was lost in some way, the citizen had to go thousands of miles, probably, to institute his suit. The result was that he had to settle his damages at what he could get. What have we done? We have made the initial carrier, the carrier that takes and receives the shipment, responsible for the loss of the article in the way of damages. We save the shipper from going to California or some distant place to institute his suit. Why? The reasons inducing us to do that were that the initial carrier has a through-route connection with the secondary carrier, on whose route the loss occurred, and a settlement between them will be an easy matter, while the shipper would be at heavy expense in the institution of a suit. If a judgment is obtained against the initial carrier, no doubt exists but that the secondary carrier would pay it at once. Why? Because the arrangement, the concert, the co-operation, the through route courtesies between them would be broken up if prompt payment were not made. We have done that in conference.’ (40 Cong. Rec. Pt. 10, p. 9580.)

“‘It must be conceded that the effect of the act in respect of carriers receiving packages in one state for a point in another, and beyond its own lines, is to deny to such an initial carrier the former right to make a contract limiting liability to its own line. This, it is said, is a denial of the liberty of contract secured by the 5th Amendment to the Constitution. To support this, counsel cited such cases as *Allgeyer v. Louisiana*, 165 U. S. 589, 41 L. ed. 835, 17 Sup. Ct. Rep. 427; *Lochner v. New York*, 198 U. S. 45, 49 L. ed. 937, 25 Sup. Ct. Rep. 539, 3 A. & E. Ann. Cas. 1133; and *Addair v. United States*, 208 U. S. 161, 52 L. ed. 436, 28 Sup. Ct. Rep. 277, 13 A. & E. Ann. Cas. 764.

“‘This power to regulate is the right to prescribe the rules under which such commerce may be conducted. ‘It is,’ said Chief Justice Marshall, in *Gibbons v. Ogden*, 9 Wheat. 1, 196, 6 L. ed. 23, 70, ‘the power \* \* \* vested in Congress as absolutely as it would be in a single government having in its Constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States.’ It is a power which extends to the regulation of the appliances and machinery and agencies by which such commerce is conducted. Thus, in *Johnson v. Southern P. Co.*, 196 U. S. 1, 49 L. ed. 363, 25 Sup. Ct. Rep. 158, an act prescribing safety appliances was upheld. And in *Interstate Commerce Commission v. Illinois C. R. Co.*, 215 U. S. 452, 54 L. ed. 280, 30 Sup. Ct. Rep. 155, it was held that the equipment of an interstate railway, including cars used for the transportation of its own fuel, was subject to the regulation of Congress. In *Interstate Commerce Commission v. Chicago & A. R. Co.*, 215 U. S. 479, 54 L. ed. 291, 30 Sup. Ct. Rep. 163, it was held to extend to the distribution of coal cars to the shipper, so as to prevent discrimination. In the *Employers Liability Cases* (*Howard v. Illinois C. R. Co.*) 207 U. S. 463, 52 L. ed. 297, 28 Sup. Ct. Rep. 141, power to pass an act which regulated the relation of master and servant, so as to impose on the carrier, while engaged in interstate commerce, liability for the

negligence of a fellow servant, for which at common law there was no liability, and depriving such carrier of the common-law defense of contributory negligence save by way of reduction of damages was upheld. In *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211, 44 L. ed. 136, 20 Sup. Ct. Rep. 96, and *Northern Securities Co. v. United States*, 193 U. S. 197, 48 L. ed. 679, 24 Sup. Ct. Rep. 436, it was held that this power of regulation extended to and embraced contracts in restraint of trade between the states.

“It is obvious, from the many decisions of this court, that there is no such thing as absolute freedom of contract. Contracts which contravene public policy cannot be lawfully made at all; and the power to make contracts may in all cases be regulated as to form, evidence, and validity as to third persons. The power of government extends to the denial of liberty of contract to the extent of forbidding or regulating every contract which is reasonably calculated to injuriously affect the public interests. Undoubtedly the United States is a government of limited and delegated powers, but in respect to those powers which have been expressly delegated, the power to regulate commerce between the states being one of them, the power is absolute, except as limited by other provisions of the Constitution itself.

“Having the express power to make rules for the conduct of commerce among the states, the range of congressional discretion as to the regulation best adapted to remedy a practice found inefficient or hurtful is a wide one. If the regulating act be one directly applicable to such commerce, not obnoxious to any other provision of the Constitution, and reasonably adapted to the purpose by reason of legitimate relation between such commerce and the rule provided, the question of power is for this court in the *Employers' Liability Cases* cited above, ‘is not merely the matter regulated, but whether the regulation is directly one of interstate commerce, or is embraced within the grant (of power) conferred on Congress to use all lawful means necessary and appropriate to the execution of the power to regulate commerce.’

“That a situation had come about which demanded regulation in the public interest was the judgment of Congress. The requirement that carriers who undertook to engage in interstate transportation, and as a part of that business held themselves out as receiving packages destined to places beyond their own terminal, should be required, as a condition of continuing in that traffic, to obligate themselves to carry to the point of destination, using the lines of connecting carriers as their own agencies, was not beyond the scope of the power of regulation. The rule is adapted to secure the rights of the shipper by securing unity of transportation with unity of responsibility. The regulation is one which also facilitates the remedy of one who sustains a loss, by localizing the responsible carrier. Neither does the regulation impose an unreasonable burden upon the receiving carrier. The methods in vogue, as the court may judicially know, embrace not only the voluntary arrangement of through routes and rates, but the collection of the single charge made by the carrier at one or the other end of the route. This involves frequent and prompt settlement of traffic \*balances. The routing in a measure depends upon the certainty and promptness of such traffic balance settlements, and such balances have been regarded as debts of a preferred character when there is a receivership. Again, the business association of such carriers affords to each facilities for locating primary responsibility as between them-



selves which the shipper cannot have. These well-known conditions afford a reasonable security to the receiving carrier for a reimbursement of a carrier liability which should fall upon one of the connecting carriers as between themselves.

"But it is said that any security resulting from a voluntary agreement constituting a through route and rate is destroyed if the receiving carrier is not at liberty to select his own agencies for a continuance of the transportation beyond his own line. This is an objection which has no application to the present case. This action was for loss and damage arising from several distinct shipments to different places beyond the line of the plaintiff in error, who was the initial or receiving carrier. The presumption from the absence of anything to the contrary in the record, is that the routing was over connecting lines with whom the plaintiff in error had theretofore made its own arrangements and rate. This record presents no question as to the right of the initial carrier to refuse a shipment designated for a point beyond its own line, nor its right to refuse to make a through route or joint rate when such route and rate would involve the continuance of a transportation over independent lines. We therefore refrain from any consideration of the large question thus suggested. The shipments involved in the present case were voluntarily received by an initial carrier who undertook to escape carrier's liability beyond its own line by a provision limiting liability to loss upon its own line. This was forbidden by the Carmack amendment, and any stipulation and condition in the special receipt which contravene the rule in question is invalid.

"Reduced to the final results, the Congress has said that a receiving carrier, in spite of any stipulation to the contrary, shall be deemed when it receives property in one state, to be transported to a point in another, involving the use of a connecting carrier for some part of the way, to have adopted such other carrier as its agent, and to incur carrier liability throughout the entire route, with the right to reimbursement for a loss not due to his own negligence. The conditions which justified this extension of carrier liability we have already adverted to. The rule of the common law which treated a common carrier as an insurer grew out of a situation which required that kind of security for the protection of the public. To quote the quaint but expressive words of Lord Holt, in *Coggs v. Bernard*, 2 Ld. Raym. 909, when defending and applying the doctrine of absolute liability against loss not due to the act of God or the public enemy, 'This rule,' said he, 'is a politick establishment contrived by the policy of the law for the safety of all persons the necessity of whose affairs oblige them to trust these sorts of persons, that they may be safe in their ways of dealing.'

"If it is to be assumed that the ultimate power exerted by Congress is that of compelling co-operation by connecting lines of independent carriers for purpose of interstate transportation, the power is still not beyond the regulating power of Congress, since, without merging indentity of separate lines or operation, it stops with the requirement of oneness of charge, continuity of transportation, and primary liability of the receiving carrier to the shipper, with the right of reimbursement from the guilty agency in the route. That there is some chance that this right of recoupment may not be always effective may be conceded without invalidating the regulation. If the

power existed and the regulation is adapted to the purpose in view, the public advantage justifies the discretion exercised, and upholds the legislation as within the limit of the grant conferred upon Congress. Touching the range of legislative discretion of the states in respect to occupations or trades which are effected by a public use, this court, in *Gundling v. Chicago*, 177 U. S. 183, 188, 44 L. ed. 725, 728, 20 Sup. Ct. Rep. 633, 635, said:

“ ‘Unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizen are unnecessarily, and in a manner wholly arbitrary interfered with or destroyed without due process of law, they do not extend beyond the power of the state to pass, and they form no subject for Federal interference. As stated in *Crowley v. Christensen*, 137 U. S., 86, 34 L. ed. 620, 11 Sup. Ct. Rep. 13: ‘The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community.’ ”

“But it is said that the act violates the 5th Amendment by taking the property of the initial carrier to pay the debt of an independent connecting carrier whose negligence may have been the sole cause of the loss. But this contention results from a surface reading of the act, and misses the true basis upon which it rests. The liability of the receiving carrier which results in such a case is that of a principal for the negligence of his own agents.

“In substance Congress has said to such carriers: ‘If you receive articles for transportation from a point in one state to a place in another, beyond your own terminals, you must do so under a contract to transport to the place designated. If you are obliged to use the services of independent carriers in the continuance of the transit, you must use them as your own agents, and not as agents of the shipper.’ It is therefore not the case of making one pay the debt of another. The receiving carrier is, as principal, liable not only for its own negligence, but for that of any agency it may use, although, as between themselves, the company actually causing the loss may be primarily liable.

“In *Seaboard Air Line R. Co. v. Seegers*, 207 U. S. 73, 78, 52 L. ed. 108, 110, 28 Sup. Ct. Rep. 28, 30, legislation by the state of Georgia imposing a penalty for failure to adjust damage claims within forty days was held to neither deny due process nor the equal protection of the law. Speaking by Mr. Justice Brewer, the court said of the reasonableness of the requirement and classification, that ‘the matter to be adjusted is one peculiarly within the knowledge of the carrier. It receives the goods and has them in its custody until the carriage is completed. It knows what it received and what it delivered. It knows what injury was done during the shipment, and how it was done. The consignee may not know what was in fact delivered at the time of the shipment, and the shipper may not know what was delivered to the consignee at the close of the transportation. The carrier can determine the amount of the loss more accurately and promptly and with less delay and expense than anyone else, and for the adjustment of loss or damage to shipments within the state forty days cannot be said to be an unreasonably short length of time.’

“The conclusion we reach in respect to the validity of the amendment has the support of some well considered cases. Among them we



cite: *Smeltzer v. St. Louis & S. F. R. Co.*, 158 Fed. 649; *Pittsburg C. C. & St. L. R. Co. v. Mitchell* (Ind.) 91 N. E. 735; *Louisville & N. R. Co. v. Scott*, 133 K. 724, 118 S. W. 992."

1. *Smeltzer v. St. Louis & S. F. Rd. Co.* (1908), 158 Fed. Rep. 649, cited in, *Atlantic C. L. Rd. Co. v. Riverside Mills* (1911), 219 U. S. 186, 31 Sup. Ct. Rep. 164, 55 L. Ed. 177, affirming, *Riverside Mills v. Atlantic C. L. Rd. Co.* (1909), 168 Fed. Rep. 987.
2. *Ibid.*
3. *Ibid.*
4. *Atlantic C. L. Rd. v. Riverside Mills* (1911), 219 U. S. 186, 31 Sup. Ct. Rep. 165, 55 L. Ed. 167, 177, et seq., affirming, *Riverside Mills v. Atlantic C. L. Rd. Co.* (1909), 168 Fed. Rep. 987; *Louisville & N. Rd. Co. v. Scott* (1911), 219 U. S. 209, 31 Sup. Ct. Rep. 171, 55 L. Ed. 183, affirming, *Louisville & N. Rd. Co. v. Scott*, 133 Ky. 724, 118 S. W. 990, 992; *Smeltzer v. St. Louis & S. F. Rd. Co.* (1908), 158 Fed. Rep. 649; *Pittsburgh C. C. & St. L. Rd. Co. v. Mitchell* (Ind. 1910), 91 N. E. 735, 740; *Central of Ga. Ry. Co. v. Sims* (1910), 169 Ala. 295, 301, 53 So. 826; *St. Louis & S. F. Rd. Co. v. Heyser* (Ark. 1910), 130 S. W. 562, 566; *Houston & T. C. Rd. Co. v. Lewis* (Tex. 1910), 129 S. W. 595; *Galveston H. & S. A. Ry. Co. v. Piper Co.*, 52 Tex. Civ. App. 568, 573, 115 S. W. 107; *Old Dominion S. S. Co. v. Flannery Co.* (Va. 1911), 69 S. E. 1107, 1108; *Galveston H. & S. A. Ry. Co. v. Wallace* (1912), 223 U. S. 481, 32 Sup. Ct. Rep. 205, 56 L. Ed. 516.

2018-B. CONSTITUTIONALITY OF PROVISIONS OF SECTION 20 OF THE ACT FORBIDDING EXEMPTION OF LIABILITY BY CONTRACT, RECEIPT OR OTHER DOCUMENT.

The "Carmack Amendment" making the initial carrier of an interstate shipment liable for loss or damage caused by it or connecting carriers, and forbidding exemption by contract for such liability, is not unconstitutional as taking private property without due process of law.<sup>1</sup>

1. *Louisville & N. Rd. Co. v. Scott*, 133 Ky. 724, 730, 118 S. W. 990, 992, affirmed, *Louisville & N. Rd. Co. v. Scott* (1911), 219 U. S. 209, 31 Sup. Ct. Rep. 171, 55 L. Ed. 183; *Galveston H. & S. A. Ry. Co. v. Wallace* (Tex. 1909), 117 S. W. 169, affirmed, *Galveston H. & S. A. Ry. Co. v. Wallace* (1912), 223 U. S. 481, 32 Sup. Ct. Rep. 205, 56 L. Ed. 516; *Sturges v. Detroit, G. H. & M. Ry. Co.* (Mich. 1911), 131 N. W. 706, 708; *Dodge v. Chicago, St. P. M. & O. Ry. Co.* (Minn. 1910), 126 N. W. 627, 629; *Greenwald v. Weir*, 111 N. Y. Supp. 235; *Galveston H. & S. A. Ry. Co. v. Johnson* (Tex. 1911), 133 S. W. 725, 731; *Galveston H. & S. A. Ry. Co. v. Crow* (Tex. 1909), 117 S. W. 170; *Galveston H. & S. A. Ry. Co. v. Piper Co.*, 52 Tex. Civ. App. 568, 573, 115 S. W. 107.

2018-C. CONSTITUTIONALITY OF THE STATUTE PERMITTING RECOUPMENT BY THE INITIAL CARRIER AGAINST THE CARRIER RESPONSIBLE FOR THE LOSS, DAMAGE, OR INJURY TO PROPERTY TRANSPORTED.

The portion of the "Carmack Amendment" providing that carriers issuing the receipt or bill of lading shall be entitled to recover from the carrier on whose line the loss or damage occurs, "the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment or transcript thereof," is not unconstitutional, since it makes the receipt, judgment or transcript only *prima facie* or presumptive, and not conclusive evidence.<sup>1</sup>

1. *Central of Ga. Ry. Co. v. Sims* (1910), 169 Ala. 295, 301, 53 So. 826.

2018-D. "CARMACK AMENDMENT" OF SECTION 20 OF THE ACT COVERING INITIAL CARRIER'S LIABILITY DOES NOT INFRINGE THE CARRIER'S CONSTITUTIONAL RIGHT TO CONTRACT WITH THE CONNECTING CARRIER FOR THE THROUGH ROUTE.

Section 6 of the Interstate Commerce Act requires interstate carriers to publish the rates between points on its own route and points on the route of other carriers when a through route and rate have been

established; and if no joint rate over the through route has been established, the several carriers are required to publish the separately established rates, fares and charges applied to the through transportation. Section 15 of the Act provides that where there are two or more through routes and through rates established, the person making the shipment shall have the right to designate which of the through routes his property shall be carried over, and that the shipper shall have the right, where competing lines of railway constitute portions of a through line or route, to determine over which of the competing lines his freight shall be transported. The "Carmack Amendment" makes the initial carrier liable for loss or damage on the lines of the connecting carrier. *HELD*, the right of routing so conferred, together with the liability imposed on the initial carrier, did not violate the constitutional rights of contract of the carrier; for if it has not contracted with a connecting carrier it cannot be required to accept for through carriage, and if it does accept for through carriage it does so under contract with the connecting carrier.<sup>1</sup>

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1. *Cleveland, C. C. & St. L. Ry. Co. v. Hayes* (Ind. 1913), 102 N. E. 34, 38. See also, *St. Louis, I. M. & S. Ry. Co. v. Carlisle* (Okla. 1912), 128 Pac. 690.

#### 2018-E. CONSTITUTIONALITY OF STATE STATUTES REGULATING LIABILITY OF CONNECTING CARRIERS ON INTRASTATE TRAFFIC.

No rights under the United States Constitution, 14th Amendment, are infringed by the provisions of S. C. Civ. Code 1912, Sections 2754, 2755, under which all carriers participating in a through intrastate shipment are made the agents of each other with respect to the transportation, so that any of the carriers may be sued for loss or damage occurring on any part of the route, being given the right of recovery over against the carrier in fault.<sup>1</sup>

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1. *Atlantic C. L. Rd. Co. v. Glenn* (1915), 239 U. S. 388, 36 Sup. Ct. Rep. 154, 60 L. Ed. 344; citing, *Atlantic C. L. Rd. Co. v. Riverside Mills* (1911), 219 U. S. 186, 55 L. Ed. 167, 31 Sup. Ct. Rep. 164.

#### 2019. Time for giving notice of and filing of claims with carriers, and for the institution of suits for recovery of damages under Section 20 of the Act.

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##### 2019-A. NINETY DAYS, MINIMUM LIMITATION FOR THE GIVING OF NOTICE OF CLAIMS.

The proviso of Section 20 (11) of the Interstate Commerce Act states that it shall be unlawful for any common carrier subject to the provisions of the Act, to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claim than 90 days.

The Act provides that if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim shall be required as a condition precedent to recovery.<sup>1</sup>

Therefore, in view of the minimum time required by statute for giving notice of claim, any contract provisions providing a shorter



time, being in contravention of the statute, would be unlawful and void.<sup>2</sup>

1. Act, Section 20 (11), (as amended March 4, 1915). This authority is conclusive in an action for damages to an interstate shipment. *Van Lindley Nursery Co. v. Southern Ry. Co.* (S. C. 1918), 96 S. E. 221.
2. The following cases all involve contracts which were made prior to the amendatory act of March 4, 1915, (38 Stat. L. 1196), c. 176, known as the "First Cummins Amendment." This Act regulated, among other things, this feature of a bill of lading issued under the "Carmack Amendment". *St. Louis, I. M. & S. Ry. Co. v. Starbird* (1917), 234 U. S. 592, 37 Sup. Ct. Rep. 462, 61 L. Ed. 917; *Missouri, K. & T. Ry. Co. v. Harriman Bros.* (1913), 227 U. S. 657, 33 Sup. Ct. Rep. 397, 57 L. Ed. 690; *Northern P. Ry. Co. v. Wall* (1916), 244 U. S. 87, 36 Sup. Ct. Rep. 493, 60 L. Ed. 905; *Hudson v. Chicago, St. P. M. & O. Ry. Co.* (1915), 226 Fed. Rep. 38; *Olson v. Chicago, B. & Q. Rd. Co.* (1918), 250 Fed. Rep. 372; *St. Louis & S. F. Rd. Co. v. Keller*, 90 Ark. 308, 316, 119 S. W. 254; *St. Louis, I. M. & S. Ry. Co. v. Furlow*, 89 Ark. 404, 411, 117 S. W. 517; *McKinstry v. Chicago, R. I. & P. Ry. Co.* (Mo. 1911), 134 S. W. 1061, 1063; *Vigorous v. Platt*, (1911) 115 N. Y. Supp. 880; *St. Louis & S. F. Rd. Co. v. Zickafoose* (Okla. 1913), 135 Pac. 406, 407; *Post & Woodruff v. Atlantic C. L. Rd. Co.* (Ga. 1912), 76 S. E. 45; *Erie Rd. Co. v. Shuart* (1919), 250 U. S. 465, 39 Sup. Ct. Rep. 519, 63 L. Ed. 1088; *Erie Rd. Co. v. Stone* (1917), 244 U. S. 332, 37 Sup. Ct. Rep. 633, 61 L. Ed. 1173; *Baltimore & O. Rd. Co. v. Leach* (1919), 249 U. S. 217, 39 Sup. Ct. Rep. 254, 63 L. Ed. 570; *Chicago, R. I. & P. Ry. Co. v. Bruce* (Okla. 1915), 150 Pac. 880; *Crawford v. Southern Ry. Co.* (S. C. 1915), 86 S. E. 19, 20; *Toledo, St. L. & W. Rd. Co. v. Milner* (Ind. 1915), 110 N. E. 756; *Chicago, R. I. & P. Ry. Co. v. Craig* (Okla. 1916), 157 Pac. 87; *Kansas M. & O. Ry. Co. v. Gleason* (Okla. 1916), 158 Pac. 365; *Atchison, T. & S. F. Ry. Co. v. Smith* (Tex. 1916), 189 S. W. 70; *Castner v. Oregon-Washington Rd. & Nav. Co.* (Wash. 1916), 155 Pac. 167; *Texas & P. Ry. Co. v. McMillen* (Tex. 1916), 183 S. W. 773; *Atchison, T. & S. F. Ry. Co. v. Cooper* (Okla. 1918), 175 Pac. 539.

## 2019-B. VALIDITY OF NOTICE TO AN OFFICER OR STATION AGENT OF THE TERMINAL CARRIER.

Notice to an officer or station agent of the connecting carrier at final destination must be deemed to satisfy the requirement of a stipulation in a through bill of lading for an interstate shipment of cattle, issued by the initial carrier, that the shipper, as a condition precedent to his right to recover for any injury to the cattle while in transit, shall give notice in writing of his claim to some officer or station agent "of said company" before the cattle are removed from the place of destination or mingled with other stock, in view of the "Carmack Amendment" of June 29, 1906, under which the bill of lading was issued, making the connecting carrier the agent of the receiving carrier for the purpose of completing the transportation and delivering the property, and of a further stipulation in the bill of lading that its terms and conditions shall inure to the benefit of any connecting carrier over whose line the cattle shall pass.<sup>1</sup>

1. *Northern P. Rd. Co. v. Wall* (1916), 244 U. S. 87, 36 Sup. Ct. Rep. 493, 60 L. Ed. 905. It should be noted that this case arose prior to the "Cummins Amendment" of March 4, 1915, which fixes the minimum time for giving notice at 90 days.

## 2019-C. ORAL NOTICE NOT VALID WHERE WRITTEN NOTICE REQUIRED BY CONTRACT.

Where a live stock shipping contract required written notice of loss or damage to be given within 10 days after unloading, under penalty of waiver, oral notice of loss, given to an agent at the point where the animals were unloaded, although followed by investigation, cannot be deemed sufficient, for that would be an abrogation of the contract.<sup>1</sup>

1. *Olson v. Chicago, B. & Q. Rd. Co.* (1918), 250 Fed. Rep. 372. It should be noted that this case arose prior to the "Cummins Amendment" of March 4, 1915, which fixes the minimum time for giving notice at 90 days.

**2019-D. NOTICE TO CONNECTING CARRIER IS NOTICE TO THE INITIAL CARRIER.**

Since the "Carmack Amendment" abolishes the stipulation for separate liability of connecting carriers for interstate freight, notice to a connecting carrier of loss or damage to property is notice to the initial carrier.<sup>1</sup>

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1. *Chicago, R. I. & G. Ry. Co. v. Linger* (Tex. 1913), 156 S. W. 289, 299.

**2019-E. BURDEN OF PROVING THE GIVING OF WRITTEN NOTICE UPON SHIPPER.**

The giving of the written notice of claim being made a condition precedent to a recovery, the burden of proof rests upon the shipper to show that such notice was given within the time provided, when made an issue in the case.<sup>1</sup>

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1. *Atchison, T. & S. F. Ry. Co. v. Cooper* (Okla. 1918), 175 Pac. 539.

**2019-F. NOTICE NEED NOT BE GIVEN TO CONNECTING CARRIERS.**

Under the "Carmack Amendment" notice of loss need only be given to the initial carrier and does not need also be given to connecting carriers.<sup>1</sup>

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1. *Norfolk & W. Ry. Co. v. Steele & Son* (Va. 1915), 86 S. E. 124, 127.

**2019-G. THE EFFECT OF FAILURE TO GIVE NOTICE IS EXCLUSIVELY A FEDERAL QUESTION.**

The effect of failure to give notice of claim arising on an interstate shipment is determined exclusively by Federal statute and decisions thereunder.<sup>1</sup>

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1. *Johnson v. Missouri P. Ry. Co.* (Mo. 1916), 187 S. W. 282.

**2019-H. FOUR MONTHS, MINIMUM LIMITATION FOR THE FILING OF CLAIMS WITH CARRIER.**

Section 20 (11) of the Interstate Commerce Act provides that it shall be unlawful for any common carrier to provide by rule, contract, regulation, or otherwise, a shorter period for the filing of claims than four months, but providing that if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no filing of claim shall be required as a condition precedent to recovery.

The above provision of the statute was added by the first "Cummins Amendment" of March 4, 1915. However, as to traffic moving prior to such date, the United States Supreme Court has held that the initial carrier may validly stipulate in the bill of lading, issued conformably to the "Carmack Amendment" of June 29, 1906, for an interstate shipment that "claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point



of origin which four months after the delivery of the property or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed";<sup>1</sup> that the misdelivery of an interstate shipment by the terminal carrier must be regarded as "failure to make delivery," within the meaning of a clause in the bill of lading issued by the initial carrier, conformably to the "Carmack Amendment" of June 29, 1906, which casts upon that carrier responsibility with respect to the entire transportation, that "claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after the delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed";<sup>2</sup> that the effect of a stipulation in a bill of lading for an interstate shipment requiring claims for damages or misdelivery to be presented within four months after a reasonable time for delivery has elapsed cannot be avoided by suing the carrier in trover on the theory that in making the misdelivery it converted the shipment, and thus abandoned the contract, since the parties could not waive the terms of the contract under which the shipment was made, pursuant to the Act of February 4, 1887, nor could the carrier by its conduct give the shipper the right to ignore the terms and hold the carrier to a different responsibility from that fixed by the agreement made under the published tariffs and regulations;<sup>3</sup> that a claim for the value of a shipment of flour misdelivered by the carrier is sufficiently made to satisfy the requirement of the bill of lading that claims based on failure to make delivery shall be made in writing within four months after the time for delivery has elapsed, where the shipper, after making an investigation in response to a telegram from the carrier's traffic manager, telegraphed the latter five days after the arrival of the flour at destination, "We will make claim against railroad for entire contents of car at invoice price. Must refuse shipment as we cannot handle."<sup>4</sup>

A provision limiting the time for filing claims for loss or damage of express shipments to four months, is not in conflict with the "Cummins Amendment" or unreasonable. The Amendment does not confine such limitation to undisclosed loss or damage.<sup>5</sup>

A four-months' limitation in a bill of lading as to the time in which a claim must be filed applies to a claim for freezing.<sup>6</sup>

A six-months' limitation in the domestic bill of lading upon time within which claims for loss, damage, or injury may be filed was not specifically prescribed by the Interstate Commerce Commission, but was arrived at by agreement of the shipping and carrier interests pending the proceeding before the Commission.<sup>7</sup>

This six-months' period of limitation applicable to domestic traffic was prescribed by the Commission in the Uniform Bill of Lading *In the Matter of Bills of Lading* (1919), 52 I. C. C. Rep. 671, and the carriers in the Official and Western Classification Territories have also made this a provision in their bill of lading as authorized in the Consolidated Freight Classification No. 2.

With reference to the limitation upon time for filing claims on export traffic, by agreement between carriers and shippers, the limit was extended on June 1, 1916, from four to nine months and this limit appears in the new export bill of lading which was prescribed by the

Interstate Commerce Commission in *In the Matter of Bills of Lading, supra*.<sup>8</sup>

The carriers' practice of construing "delivery" as delivery at the port of export was found by the Commission to not be unreasonable.<sup>9</sup>

1. Georgia, F. & A. Ry. Co. v. Blish Milling Co. (1916), 241 U. S. 190, 36 Sup. Ct. Rep. 541, 60 L. Ed. 948; Stevens & Russell v. St. Louis S. W. Ry. Co. (Tex. 1915), 178 S. W. 810, 812; Atchison, T. & S. F. Ry. Co. v. Cozart (Okla. 1916), 158 Pac. 933; Chicago, R. I. & P. Ry. Co. v. Williams (Ark. 1912), 142 S. W. 826, 827; Joseph v. Chicago, B. & Q. Rd. Co. (Mo. 1913), 157 S. W. 837, 838.
2. Georgia, F. & A. Ry. Co. v. Blish Milling Co., *supra*.
3. *Ibid*.
4. *Ibid*. Following the decision of the United States Supreme Court in Georgia, F. & A. Ry. Co. v. Blish Milling Co., *supra*, the Interstate Commerce Commission issued the following Conference Ruling, Rule 510: "It is the view of the Commission that the provision in the uniform bill of lading requiring that claims for loss, damage, or delay must be made in writing within a specified period is legally complied with when the shipper, consignee, or the lawful holder of the bill of lading, within the period specified files with the agent of the carrier, either at the point of origin or the point of delivery of the shipment, or with the general claims department of the carrier, a claim or a written notice of intended claim describing the shipment with reasonable definiteness." (Conf. Rul. Bul., Rule 510, [June 21, 1917], modifying Conf. Ruling 456).
5. In the Matter of Express Rates, Practices, Accounts and Revenues (1917), 43 I. C. C. Rep. 510, 512.
6. Midland Linseed Co. v. American Liquid Fireproofing Co. (Ia. 1918), 166 N. W. 573, 574.
7. Blackburn & Co. v. Ann Arbor Rd. Co. (1920), 56 I. C. C. Rep. 439, 440.
8. Price & Co. v. Atchison, T. & S. F. Ry. Co. (1920), 56 I. C. C. Rep. 435, 437.
9. *Ibid*.

#### 2019-I. TWO YEARS, LIMITATION FOR INSTITUTION OF SUITS FOR RECOVERY OF DAMAGES.

Section 20 (11) of the Interstate Commerce Act (*as amended March 4, 1915*) provides that it shall be unlawful for any common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the institution of suits than two years, such period for the institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

Under the "Cummins Amendment" a shipper has two years within which to bring suit. Where it clearly appears that the cause of action is barred by limitation, and the trial court properly sustained such defense, errors, if any, occurring in the trial are without prejudice.<sup>1</sup>

Prior to the "Cummins Amendment" of March 4, 1915, there was nothing under the "Carmack Amendment" prohibiting the agreement by the parties to an interstate shipping contract upon the time limit with which to bring an action to recover for damages for injury to the property transported.<sup>2</sup>

In *Decker Sons v. Director General, Minneapolis & St. L. Rd. Co.*<sup>3</sup> the following provision in the carrier's bill of lading was attacked: "Suits for loss, damage, or delay shall be instituted only within two years and one day after delivery of the property, or, in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed."

The Commission held this provision to be unreasonable, unjustly discriminatory, and unduly prejudicial and further held that the car-



rier's bill of lading provisions with respect to the filing of claims or the institution of suits on account of loss, damage, or delay did not prohibit the payment of meritorious claims, if seasonably filed with the carrier, after the two-year-and-one-day period, described in the bill of lading as the maximum period for instituting suit, has elapsed.

The effect of this holding is to modify the provision of Section 2 of the uniform bill of lading proposed by the Commission in *In the Matter of Bills of Lading* (1919), 52 I. C. C. Rep. 671.

Clearly, this limitation in the bill of lading is in contravention of the provision of Section 20 of the Interstate Commerce Act making it unlawful for a carrier to provide a shorter time for the institution of suits than two years, and further providing that such period for the institution of suits is to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in writing.

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1. *Ezell v. Midland Valley Rd. Co.* (Okla. 1918), 174 Pac. 781.
  2. *Watt v. Missouri, K. & T. Ry. Co.* (1912), 136 Pac. 600; *St. Louis & S. F. Rd. Co. v. Pickens* (Okla. 1915), 151 Pac. 1055.
  3. *Decker & Sons v. Director General, Minneapolis & St. L. Rd. Co.* (1919), 55 I. C. C. Rep. 453.

#### 2019-J. PERIOD OF FEDERAL CONTROL EXCLUDED IN DETERMINING LIMITATION OF ACTIONS.

Transportation Act of 1920 providing that "the period of Federal control shall not be computed as a part of the periods of limitation in actions against carriers \* \* \* for causes of action arising prior to Federal control," *held* to apply to an action by a shipper for loss of goods, where the limitation was fixed, not by contract between the parties, but in the absence of such contract by the terms of the uniform bill of lading published and filed by the carrier with its schedules, although the period of limitation had expired and action had been commenced before the passage of the act.<sup>1</sup>

In *Lazarus v. New York C. Rd Co.*<sup>2</sup> Mr. District Judge Learned Hand stated: "The next question is open on authority and must be settled on principle. It turns upon the effect to be given to section 206 (f) of the Transportation Act of 1920, which went into effect more than two years after the loss occurred and some months after the action had been commenced. It is divisible into two parts: First, whether the section covers this case in its meaning; second, whether it is valid, when applied to defense already completed, established by the lapse of time. The section is as follows:

"Sec. 206: '(f) The period of federal control shall not be computed as a part of the periods of limitation in actions against carriers \* \* \* for causes of action arising prior to federal control'.

"The defendant argues that the phrase 'periods of limitation' must refer only to limitation by statute, and cannot include a limitation such as this derived from the bill of lading filed with the Commission.' In corroboration of that construction it appeals to section 206 (a), which reads in part as follows:

"Such actions (actions arising out of federal control), suits, or proceedings, may, within the periods of limitation now prescribed by state or federal statutes, but not later than two years from the date of the passage of this act, be brought,' etc.

“There is good reason for interpreting the phrase ‘periods of limitation’ in the same way in each subsection, and I accept the defendant’s argument pro tanto. But I believe that, at least in the absence of a contract with the shipper, the period fixed by the bill of lading is a ‘period of limitation prescribed by \* \* \* federal statutes.’ Section 20 of the Interstate Commerce Act (Comp. St. Sec. 8604a) forbids a carrier by ‘rule, contract, regulation or otherwise’ to make a limitation of less than two years, and in so doing it may truly be said to prescribe that period as a minimum. It is true that it gives the carrier the right to establish a longer period, if it chooses, which it has not here chosen to do except to the extent of one day, and it may be where there is a valid contract between the carrier and the shipper for a period longer, even by so short a time as one day, that it would be improper to speak of the limitation as ‘prescribed by’ the statute. However, in the case at bar there was no such contract, as the defendant concedes, and to avail itself of any limitation whatever it must resort to the statute, section 1, sub-division 4, which gives binding effect to its schedule when published and filed, as required by the Commission.

“Assuming, then, that section 20 does not ‘prescribe’ the period, because of the addition of one day, yet it remains true that it is not by contract, but by legislative permission, that any period at all is fixed and the issue turns upon the merely verbal question whether though in substance fixed by the right granted the carrier by statute, the period is ‘prescribed by \* \* \* federal statutes.’ I think that the language should be referred rather to the substance of the situation than to its form. The clause was apt to cover all those limitations which got force from positive law rather than from contract, and if the defendant relies upon the statute to limit the period, it must not blow hot and cold, by denying the application of all relevant amendments. To be sure, section 206 (a) might have read ‘periods of limitation, prescribed or derived from state or federal statutes’; but that would have been a blind and clumsy phrase, and there can, I believe be little doubt that the intent went to all limitations forced upon the shipper without his consent. Furthermore, the Transportation Act went in effect February 28, 1920, more than two years after the President had seized the railroads. Actions for personal injuries not infrequently have a period of limitation of only three years or less, and actions on contracts of carriage are generally limited to two years under section twenty. Unless section 206 (f) has the effect of extending the period of limitation already expired, it will have a very small operation at all, and will probably fail to include the majority of those cases which were pending on December 28, 1917. It seems to me, therefore, judged merely as matter of intent, that section 206 (f) tolled the limitation.

“The remaining question is of the constitutionality of the section as construed. If the defendant depended upon a contract between itself and the shipper, I should have great doubts of the validity of such a statute, but as I have already said, it does not. The question is merely whether, when the period has been completed within which by force of statute, the shipper may begin a suit, a second statute may restore that remedy which the first took away. Upon that question it seems to me that *Campbell v. Holt*, 115 U. S. 620, 6 Sup. Ct. 209, 29 L. ed. 483, is conclusive, and I need discuss it no further. The case does not involve the acquisition of property rights by prescription, but of taking away and



later restoring a remedy for a chose in action. Whatever the theoretical basis for any such distinction, it is too well settled to be open now to any question.

“Verdict directed for the plaintiff on both causes of action.”

1. *Lazarus v. New York C. Rd. Co.* (1921), 271 Fed. Rep. 93.
2. *Ibid.*

2019-K. CIRCUMSTANCES UNDER WHICH NOTICE OF CLAIM OR FILING OF CLAIM NOT REQUIRED AS CONDITIONS PRECEDENT TO RECOVERY.

Section 20 (11) of the Interstate Commerce Act, (*as amended March 4, 1915*), contains the following proviso:

That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery.

The filing of suit against a carrier within four months for damage to an interstate shipment, under the provisions of the Federal Interstate Commerce Act that if the loss, damage, or injury was due to delay or damage while being loaded or unloaded, or to carelessness or negligence while in transit, no notice of filing of claim shall be required as a condition precedent to recovery, was sufficient compliance with the stipulation in the bill of lading that claims must be made in writing to the carrier at the point of delivery or of origin within four months.<sup>1</sup>

The proviso of the Interstate Commerce Act, that if the loss, damage, or injury complained of was due to the delay or damage while being loaded or unloaded, or to damage in transit by carelessness or negligence, then no notice of filing of claim shall be required as a condition precedent to recovery against a carrier, was conclusive authority in an action for damage to an interstate shipment.<sup>2</sup>

Where an interstate shipment of horses was unnecessarily and carelessly held in the railroad yards at an intermediate point, notice of claim for loss was unnecessary under the provisions of the “Cummins Amendment” of March 4, 1915.<sup>3</sup>

Notice of damage to live stock in transit, caused by the carrier's negligence, being unnecessary, an allegation, in answer in action for such damage, as to lack of notice, will be stricken as redundant and immaterial.<sup>4</sup>

In *Hailey v. Oregon Short Line Rd. Co.*<sup>5</sup> the court held that the claimant must either allege and prove notice and the filing of a claim, or must allege and prove negligence. Where the plaintiff alleges negligence, but neither the giving of notice nor the filing of a claim, in order to succeed it will be incumbent upon the plaintiff to prove negligence. Mr. District Judge Dietrich stated: “The plaintiffs, doing business under the firm name of Caldwell Horse & Mule Company, have brought this action to recover from the defendant the aggregate sum of \$6,553.40, on account of damages which they claim to have suffered as a consequence of the negligence of the defendant company and connecting carriers in transporting for them 139 head of horses from Caldwell, Idaho, to East St. Louis, Ill., on the 24th day of January, 1917. In substance it is charged that the time consumed in the transportation was 16 days, where it should have been only 7, and that the horses were unnecessarily and carelessly held at Green River, Wyo.,

for 8 days, in the yards of the railroad company, without proper shelter and care, or proper facilities therefor. As a consequence of such delay and carelessness, it is alleged, 1 horse was never delivered at all and 2 of the horses were dead at the time the shipment arrived at St. Louis, an aggregate loss of \$450; \$585 was necessarily spent by plaintiffs for feed at Green River; \$518.40 in caring for and feeding the horses at East St. Louis, in bringing them up to a fair condition for the market; and there was a depreciation in the market value of \$5,000.

"As a part of its defense the defendant sets forth the shipping agreement, one provision of which is to the effect that, unless notice of damages was presented in writing within 90 days from the unloading of the horses at St. Louis, all claims would be deemed to have been waived, with the proviso, however, that:

"If loss, damage, or injury complained of was due to delay or damage caused or contributed to by the carrier, or its employees, while being loaded or unloaded, or if damaged in transit by carelessness or neglect of the carrier, or its employees, then no notice of claim or filing of claim would be required."

"The plaintiff interposes a motion to strike out the part of the answer setting up this defense, and also interposes a demurrer to reach the same point. The question raised by both the motion and demurrer, upon which the cause is presently submitted, involves a construction of substantially the same language contained in the amendatory act of March 4, 1915 \* \* \*. In so far as it is material, this act is as follows:

"It shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days and for the filing of claims for a shorter period than four months, and for the institution of suits than two years; provided, however, that if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery."

"So far as appears, the plaintiffs never gave any notice or made any claim of loss. As already stated, the horses were held at Green River for the period of 8 days, and it is to be inferred from the complaint that most, if not all, of the damage resulted from such detention. It is the defendant's position that while the horses were so detained, they were not 'in transit,' within the meaning of the proviso above quoted, and that, therefore, the plaintiffs were not relieved from presenting a claim within the time prescribed, and, having failed to present such claim, they cannot now recover. It must be admitted that the meaning of the proviso is extremely obscure. The subject-matter which Congress had under consideration was the extent to which the carrier should be permitted to go in exacting notice and the presentation of claims for damages. In the principal clause it is declared that it shall be unlawful to require notice in less than 3 months, the filing of claims in less than 4 months, or the bringing of suit in less than 2 years. Such a provision would seem to be both clear and reasonable. But why an exception to it? Why, in the absence of fraudulent concealment or some extraordinary disability, excuse the shipper in any case from giving notice or filing his claim or commencing his suit within the period prescribed? No satisfactory answer has been suggested, and apparently none is at hand. We cannot with assurance, therefore, interpret the proviso in the light of the object intended to be accomplished, nor can a construction be condemned merely because thereunder the provision does not commend itself to us as being entirely reasonable.



"If, then, we take the only course open to us and give to the terms employed their common import, what is the result? To say that the phrase 'in transit' is applicable only while a shipment is actually moving is to give to it an unusual and strained construction. Ordinarily a shipment is understood to be in transit from the point of origin until it reaches the point of destination. So long as it is in the course of being delivered to the place to which it is being shipped, it is in transit. A piece of baggage billed from New York to Boise is in-transit all the time it is in the possession of the carrier for delivery at Boise—just as much when it is upon a car standing at a station, pursuant to or awaiting orders, or upon a truck or station platform for transfer to another car, en route, as when it is upon a car moving 40 miles an hour. Not only would we do violence to the ordinary meaning of the phrase if we hold that here it is to be understood as equivalent to 'while actually moving,' but such a construction would necessarily result in absurd distinctions. As to the duty of giving notice or filing claim, why should a discrimination be made between the case of a collision, where the car carrying the shipment is standing on a siding, and one where it is moving on a siding? Nor, if we say 'in transit' is limited to cases where the shipment is actually in a car, is the construction any more defensible. No semblance of reason can be assigned for requiring notice if the freight is burned in or stolen from a car, and at the same time relieving the shipper from such obligation if the theft or fire was in an adjacent freight depot. True, the phrase may sometimes be used in a narrow sense; but there is nothing here in the attendant language to suggest the exceptional use, and, to say the least, such a use would contribute nothing to the reasonableness of the provision as a whole. The phrase is therefore to be understood in the sense in which it is commonly employed.

"Upon consideration, I am inclined to the view that the basis of classification intended by Congress must be found in the phrase 'by carelessness or negligence.' It is used in no other place in the entire section, and in the absence of some other ground for classification it appears to be not improbable that the legislative mind made a distinction between liabilities resulting from the carrier's negligence and those which rest upon a different basis, and accordingly declared that the carrier should not require notice of claims for damages arising out of its own negligence. While, for reasons which it is unnecessary to explain, we may be unable to assent to the wisdom or justice of denying to the carrier this right, such seems to be the intent of the proviso. So far as the facts in this case are concerned, the construction involves no lexical or grammatical difficulties. The damages claimed were not the result of delay or injury in loading or unloading the horses; they were damaged 'in transit,' as that phrase is ordinarily understood, and by the carelessness and negligence of the carrier, if the averments of the complaint are true. The phrase 'carelessness and negligence' undoubtedly qualifies 'damaged in transit.'

"In the case of a claim for damages suffered in the loading or unloading of a shipment, the grammatical relation of the phrase, especially when we consider the punctuation, is more difficult. But in some particulars the grammatical construction is manifestly defective, and, that being true, it may very well be that the use of a comma is the result of inadvertence rather than of design. If in other respects the

structure were artistic, perhaps a different view should be taken; but under the circumstances it is thought we are warranted in entirely ignoring the comma after 'unloaded' or inserting it after 'transit.' In this view the proviso in effect relieves the shipper from giving notice or filing claim for such damages, and such damages only, as result from the carrier's negligence, either in loading the shipment at the point of origin, or in carrying it to the point of destination, or in there unloading it. A claimant must either allege and prove notice, and the filing of a claim, or must allege and prove negligence. Here the plaintiffs have alleged negligence, but neither the giving of notice nor the filing of a claim, and to succeed it will therefore be incumbent upon them to prove negligence.

"It follows that the matter in the answer to which their motion is directed is redundant and immaterial, and accordingly the motion will be allowed."

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1. *Van Lindley Nursery Co. v. Southern Ry. Co.* (S. C. 1918), 96 S. E. 221.
  2. *Ibid.*
  3. *Hailey v. Oregon S. L. Rd. Co.* (1918), 253 Fed. Rep. 569, 572.
  4. *Ibid.*
  5. *Ibid.*

2019-L. CARRIER CANNOT WAIVE THE TIME LIMIT PROVISION OF A BILL OF LADING GOVERNING THE FILING OF CLAIM.

The provision of a bill of lading that claims for loss must be made within four months is binding, and the carrier cannot waive it, and thus discriminate between shippers in violation of the Interstate Commerce Act.<sup>1</sup>

In *Georgia, F. & A. Ry. Co. v. Blish Milling Co.*<sup>2</sup> the United States Supreme Court held that the effect of a stipulation in a bill of lading for an interstate shipment requiring claims for damages or misdelivery to be presented within four months after a reasonable time for delivery has elapsed cannot be avoided by suing the carrier in trover on the theory that in making the misdelivery it converted the shipment, and thus abandoned the contract, since the parties could not waive the terms of the contract under which the shipment was made, pursuant to the Interstate Commerce Act as amended, nor could the carrier by its conduct give the shipper the right to ignore the terms and hold the carrier to a different responsibility from that fixed by the agreement made under the published tariffs and regulations.

None of the provisions of a bill of lading on an interstate shipment can be waived by the parties, inasmuch as the contract had been made pursuant to the "Carmack Amendment."<sup>3</sup>

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1. *Keeney v. Chicago, B. & Q. Rd. Co.* (Ia. 1918), 167 N. W. 475; *New York C. Rd. Co. v. Mutual Orange Distributors* (1918), 251 Fed. Rep. 230, 234; *Banaha v. Missouri P. Ry. Co.* (Mo. 1916), 186 S. W. 7; *Cudahy Packing Co. v. Chicago & N. W. Ry. Co.* (Mo. 1918), 201 S. W. 596; *Houston, E. & W. T. Ry. Co. v. Houston Packing Co.* (Tex. 1918), 203 S. W. 1140; *Wall v. Northern P. Ry. Co.* (Mont. 1916), 161 Pac. 518 521.
  2. *Georgia, F. & A. Ry. Co. v. Blish Milling Co.* (1916), 241 U. S. 190, 36 Sup. Ct. Rep. 541, 60 L. Ed. 948.
  3. *Cudahy Packing Co. v. Bixby* (Mo. 1918), 205 S. W. 865.



2019-M. WHEN THE "FILING" OF A CLAIM WITH A CARRIER IS COMPLETE.

In a prosecution under the Act to Regulate Commerce as amended, against a corporation for fraudulent claim for injury to a shipment, a corporate officer who signed letters making claim for injuries to a shipment is entitled to testify as to his intent, it appearing that the claims were prepared by his bookkeeper, for the corporation could act only through its officers or agents, and intent of the officer is that of the corporation.<sup>1</sup>

Where it was asserted that a claim against a railroad company was fraudulent and that the pressing of the claim was a violation of the Act to Regulate Commerce as amended, the acts and saying of one prosecuting or pressing the claim are generally admissible on the question of intent, and he may also testify as to his intention.<sup>2</sup>

An indispensable element of the charge in the indictment was that the defendant filed with the St. Louis, Iron Mountain & Southern Railway Company a fraudulent claim for an excessive amount of damages. The "filing" of a paper or claim with a corporation is not complete until the document is delivered to and received by an officer or agent thereof who had authority to receive, file, or act upon it. There was no substantial evidence of any such filing of the claim, or of any of the documents making it, with any such officer or agent of the railroad company, and for that reason the court should have instructed the jury to return a verdict for the defendant.<sup>3</sup>

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1. *Laser Grain Co. v. United States* (1918), 250 Fed. Rep. 826.

2. *Ibid.*

3. *Ibid.*

2019-N. CONNECTING CARRIER CANNOT BE PREVENTED BY ESTOPPEL OR OTHERWISE FROM RELYING UPON A PROVISION OF THE BILL OF LADING THAT SUIT MUST BE BROUGHT WITHIN A SPECIFIED TIME.

Connecting carriers of an interstate shipment cannot be prevented by estoppel or otherwise from relying upon a provision in the bill of lading issued by the initial carrier, conformably to the "Carmack Amendment" that suits for damages must be brought within six months after the loss occurs, although such connecting carriers exacted from the shipper, as a condition of carriage over their lines, new bills of lading which did not contain any such limitation as to time for suit,—at least, where the shipper repudiates the new bills of lading issued by the connecting roads.<sup>1</sup>

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1. *Texas & P. Ry. Co. v. Leatherwood* (1919), 250 U. S. 478, 39 Sup. Ct. Rep. 517, 63 L. Ed. 1096.

2019-O. FILING OF CLAIM BY SHIPPER WITH CONNECTING CARRIER NOT REQUIRED, EVEN THOUGH A MODIFIED BILL OF LADING WAS ISSUED BY THE CONNECTING CARRIER AND THE LOSS OCCURRED ON THE LINE OF THE CONNECTING CARRIER.

To require the shipper of an interstate shipment, in order to recover for a loss, to file his verified claim with the connecting carrier which caused the injury, as is provided in a separate bill of lading issued by that carrier, would defeat the purpose of the "Carmack Amendment" which was to relieve shippers of the difficult and almost impos-

sible task of determining on which of several connecting lines the damage occurred.<sup>1</sup>

Acceptance by the shipper of an interstate shipment of a second bill of lading issued by a connecting carrier did not and could not operate as a waiver of any rights thereafter accruing under the original bill of lading issued conformably to the "Carmack Amendment" to the Interstate Commerce Act, by the initial carrier.<sup>2</sup>

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1. *Missouri, K. & T. Ry. Co. of Texas v. Ward* (1917), 244 U. S. 383, 37 Sup. Ct. Rep. 617, 61 L. Ed. 1213.

2. *Ibid.*

## 2020. Jurisdiction of the Interstate Commerce Commission under Section 20 of the Act.

### 2020-A. INTERSTATE COMMERCE COMMISSION POSSESSES NO JURISDICTION OVER ACTIONS FOR DAMAGES SOUNDING IN TORT.

While it is well settled that the Interstate Commerce Commission may award damages for reparation of injuries resulting from violations of the Interstate Commerce Act, it is equally well settled that it has no authority to award damages due to other causes. It, therefore, seems clear that if a shipper has a valid cause of action for a loss or damage the same is cognizable in the courts and not by the Commission.<sup>1</sup>

The liability of common carriers for the loss of or damage to shipments rests upon definite legal principles, and the enforcement of such liability is not within the jurisdiction of the Interstate Commerce Commission. This liability should be kept separate from the freight charges.<sup>2</sup> The Commission cannot direct the payment of a loss-and-damage claim, since the failure to pay would not be a violation of the Act to Regulate Commerce.<sup>3</sup>

The Interstate Commerce Commission is without jurisdiction to award damages sounding in tort.<sup>4</sup> The Commission has no authority to adjudicate a question of damage for conversion.<sup>5</sup> The jurisdiction of the Commission over claims for reparation does not extend to claims arising from loss or damage to shipments in transit, such claims being cognizable only in the courts.<sup>6</sup>

The Interstate Commerce Commission is not a judicial tribunal and, therefore, cannot under Section 20 of the Interstate Commerce Act try an action by the shipper against an initial carrier for damage to an interstate shipment.<sup>7</sup>

The Interstate Commerce Commission has no power to order the payment of loss-and-damage claims without litigation if the carriers choose to require the shipping interests to sue on their claims.<sup>8</sup>

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1. *Brunswick-Balke-Collender Co. v. Toledo S. & M. Ry. Co.* (1917), 44 I. C. C. Rep. 598, 601; *Hudson Motor Car Co. v. Michigan C. Rd. Co.* (1916), 42 I. C. C. Rep. 1.

2. *Lost or Damaged Freight Replacement* (1917), 43 I. C. C. Rep. 257, 258; cited, *In the Matter of Bills of Lading* (1919), 52 I. C. C. Rep. 671, 685.

3. *Larkin Co. v. Erie & W. Transportation Co.* (1912), 24 I. C. C. Rep. 645, 646; cited, *In the Matter of Bills of Lading*, *supra*.



4. *Mattison v. Pennsylvania Co.* (1912), 23 I. C. C. Rep. 233, 235; *Ralston Townsite Co. v. Missouri P. Ry. Co.* (1912), 22 I. C. C. Rep. 354, 355; *Wood-Mosaic Flooring & Lumber Co. v. Louisville & N. Rd. Co.* (1912), 22 I. C. C. Rep. 458, 459; *Kay Co. v. Denver & R. G. Rd. Co.* (1911), 21 I. C. C. Rep. 239, 240; *Buffalo Hardwood Lumber Co. v. Baltimore & O. S. W. Rd. Co.* (1911), 21 I. C. C. Rep. 536, 538; *Hillsdale Coal & Coke Co. v. Pennsylvania Rd. Co.* (1910), 19 I. C. C. Rep. 356, 371; *Hanley Milling Co. v. Pennsylvania Co.* (1910), 19 I. C. C. Rep. 475, 476; *Ponchaoula Farmers' Association v. Illinois C. Rd. Co.* (1910), 19 I. C. C. Rep. 513, 515; *Joynes v. Pennsylvania Rd. Co.* (1909), 17 I. C. C. Rep. 361, 369; *Werner Saw Mills Co. v. Illinois C. Rd. Co.* (1910), 17 I. C. C. Rep. 388, 391; *Laning-Harris Coal & Grain Co. v. St. Louis & S. F. Rd. Co.* (1909), 15 I. C. C. Rep. 37, 38; *Blume & Co. v. Wells Fargo & Co.* (1909), 15 I. C. C. Rep. 53, 55; *Royal Brewing Co. v. Adams Express Co.* (1909), 15 I. C. C. Rep. 255, 256; *Manning v. Chicago & A. Rd. Co.* (1908), 13 I. C. C. Rep. 125, 127.
5. *Pecos & N. T. Ry. Co. v. Porter* (Tex. 1913), 156 S. W. 267, 270.
6. *Buss Co. v. New York C. Rd. Co.* (1917), 45 I. C. C. Rep. 161.
7. *Louisville & N. Rd. Co. v. Scott*, 133 Ky. 724, 729, 118 S. W. 990, affirmed, *Louisville & N. Rd. Co. v. Scott* (1911), 219 U. S. 209, 31 Sup. Ct. Rep. 171, 55 L. Ed. 183.
8. *New York Mercantile Exchange v. Baltimore & O. Rd. Co.* (1915), 36 I. C. C. Rep. 156, 160.

2020-B. ADMINISTRATIVE POWER OF THE INTERSTATE COMMERCE COMMISSION OVER STIPULATIONS IN CARRIERS' BILLS OF LADING AFFECTING LIABILITY.

In the proceeding entitled "*In the Matter of Bills of Lading*,"<sup>1</sup> the Interstate Commerce Commission stated:

"The Commission is merely the instrument of the law. Its functions are administrative and quasi-judicial. Its authority to prescribe and impose upon carriers the terms and conditions which they shall write into their bills of lading is limited (1) by the common law; that is, the Commission in no event could impose upon the carriers the assumption of any greater liability than the common law imposes upon them; and, (2) by the statutory law, since the Commission's power and authority springs from and is limited by the organic act.

"Section 12 of the act to regulate commerce as originally enacted, which defines the powers and authority of the Commission in broad terms provided:

"That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.

"By the amendment of March 2, 1889, to this section it was provided:

"And the Commission is hereby authorized and required to execute and enforce the provisions of this Act.

"By amendment to section 1 of the act, effective June 18, 1910, it was made the duty of all common carriers subject to the provisions of the act 'to establish, observe, and enforce just and reasonable \* \* \* regulations and practices affecting \* \* \* the issuance, form, and substance of \* \* \* bills of lading.'

"Under the provisions of section 15 of the act, as amended June 29, 1906, and June 18, 1910, the Commission is empowered after full hearing upon a complaint made as provided in section 13 of the act, or under an order for investigation made upon its own initiative, to determine whether any regulation or practice is unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of the act and 'to determine and prescribe what \* \* \* regulation or practice is just, fair, and

reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violations to the extent to which the Commission finds the same to exist.'

"Thus the Commission has power and authority under the act to determine the reasonableness of rules, regulations, and practices of the carriers, and to require them to cease and desist from the enforcement of rules and regulations, and the continuance of practices found to be unreasonable or unjustly discriminatory, or unduly prejudicial. And herein lies the Commission's power to lay hands upon the 'issuance, form, and substance' of bills of lading. The act specifically requires carriers subject thereto to issue bills of lading. The Commission has undoubted authority to enforce this requirement in a proper proceeding. It can require carriers to file with it the rules and regulations which they write into their bills of lading. It can, by due process, require that uniform rules and regulations be adopted by carriers subject to its jurisdiction. It can determine whether such are, in and of themselves, or as interpreted in the practices of the carriers, reasonable and nondiscriminatory, and, if otherwise, condemn them and prescribe reasonable rules and regulations, in which event the carriers must obey."

In *Alaska S. S. Co. v. United States*<sup>2</sup> suit was instituted to annul the order of the Interstate Commerce Commission adopting forms of bills of lading pertaining to domestic and export traffic. The majority of the judges who heard the case in the District Court for the Southern District of New York held that the Interstate Commerce Commission did not possess the power to prescribe bills of lading for either domestic or export business, and granted the motion for preliminary injunction. Mr. Circuit Judge Ward, in delivering the opinion of the court, stated: "This is a petition filed by common carriers wholly by railroad, or partly by water, under arrangements for a continuous carriage with common carriers by water, for a decree setting aside an order of the Interstate Commerce Commission, dated March 14, 1919, requiring them to use two certain bills of lading, one for domestic and the other for export transportation, prescribed by the Commission.

"The petitioners move for an injunction pendente lite. The United States and the Interstate Commerce Commission move to dismiss the petition.

"The only evidence before the court in the petition, the answer of the Interstate Commerce Commission and the report and order of the Commission. The verified petition, regarded as an affidavit, and the answer of the Commission sufficiently raise the only question we shall consider, which is one of law.

"Congress has unquestionably the power to declare what terms common carriers, subject to Interstate Commerce Act, Feb. 4, 1887, c. 104, 24 Stat. 379, and its amendments (Comp. St. Sec. 8563 et seq.), may or may not insert in their bills of lading, and it has done so from time to time. For the purpose of this case we shall assume that Congress can delegate this legislative power to the Interstate Commerce Commission, but we shall expect to find such delegation in clear and unmistakable language. Examination of the statutes does not convince us that Congress had any intention to confer upon the Commission the right to prescribe the terms of the carrier's bills of lading.



"Section 1, as amended by Act June 18, 1910, c. 309, Sec. 7, 36 Stat. 539 (Comp. St. Sec. 8563) paragraphed for greater clearness, requires all common carriers, subject to the act, to establish, observe, and enforce:

"(1) 'Just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations and practices are or may be made or prescribed.'

"(2) Just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading \* \* \* and all other matters relating to or connected with the receiving, handling, transportation, storing, and delivery of property subject to the provisions of this act. \* \* \*

"Every such unjust and unreasonable classification, regulation, and practice with reference to commerce between the states and with foreign countries is prohibited and declared to be unlawful.'

"It may be noted that the foregoing provisions apply to carriers only.

"Section 15 (Comp. St. Sec. 8583) prescribes the powers of the Commission in the premises, and not one word about contracts or the substance of bills of lading is used. The reference is only to rates, classifications, regulations, or practices in connection with the receiving, handling, transporting, storing and delivery of property. The Commission is authorized—

"to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such a case as the maximum to be charged, and what individual or joint classification, regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation or transmission in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.'

"All this refers to rates, classifications, regulations, and practices. That the Commission has power under section 12 of the act (Comp. St. Sec. 8576), to investigate as to the fairness of the carriers' bills of lading we have no doubt, but we discover nowhere any authority conferred upon it to draw the carriers' bills of lading either in whole or in part. If they are in any respect unjust or unreasonable or unlawful, the courts are open to the parties injured; if they contain any limitation of liability for loss or damage which Congress has declared to be void, the courts will say so. *Missouri, Kansas & Texas R. Co. v. Harri-man*, 227 U. S. 668, 33, Sup. Ct. 397, 57 L. Ed. 690.

"The question is one of power to make the order, and not one of its expediency. Therefore, we shall not inquire whether the alterations the Commission has prescribed in the bills of lading are reasonable or not, because we think it has no power to make them. In any event, there was no power to prescribe an inland bill of lading in form or substance depriving the carriers of the benefits of the statutes limiting the liability of vessel owners and of Harter Act Feb. 13, 1893, c. 105, 27 Stat. 445 (Comp. St. Sections 8029-8035). These statutes still survive, unless repealed by implication, and this result we are of opinion was neither intended nor accomplished.

"Indeed, section 15 prescribes:

"\* \* \* Nor shall the Commission have the right to establish any route, classification rate, fare, or charge when the transportation is wholly by water, and any transportation by water affected by this act shall be subject to the laws and regulations applicable to transportation by water'.

"The distinction between the power to make an order and the expediency of an order which the Commission has the power to make is

stated in *Interstate Commerce Commission v. Illinois Central R. Co.*, 215 U. S. at page 470, 30 Sup. Ct. at page 160, 54 L. ed. 280, referred to with approval in *Interstate Commerce Commission v. Baltimore & Ohio R. R. Co.*, 225 U. S. at page 340, 32 Sup. Ct., 742, 56 L. ed. 1107, Ann. Cas. 1914A. 504:

"Beyond controversy, in determining whether an order of the Commission shall be suspended or set aside, we must consider (a) all relevant questions of constitutional power or right (b) all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made; and (c) a proposition which we state independently, although in its essence it may be contained in the previous one, viz. whether, even although the order be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it in truth, to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. *Postal Telegraph Cable Co. v. Adams*, 155 U. S. 688, 698 (15 Sup. Ct. 268, 39 L. ed. 311). Plain as it is that the powers just stated are of the essence of judicial authority, and which, therefore, may not be curtailed and whose discharge may not be by us in a proper case avoided, it is equally plain that such perennial powers lend no support whatever to the proposition that we may, under the guise of exerting judicial power, usurp merely administrative functions by setting aside a lawful administrative order of what our conception is as to whether the administrative power has been wisely exercised. Power to make the order, and not the mere expediency or wisdom of having made it, is the question."

"All the petitioners are at present under federal control, except five of the water carriers. Of these Clyde Steamship Company and the Mallory Steamship Company have their principal operating offices in the city of New York, and so has the Old Dominion Steamship Company, which is under federal control. Of the railroads the New York Central has its principal office in this city. Therefore the jurisdiction of the court over the person conforms to the requirements of Act. Oct. 22, 1913, c. 32, 38 Stat. 219. It is said that the petitioners, except the five water carriers above mentioned, are unaffected by the order, because now in the actual control of the Director General of Railways. This control is expected to cease within the current year, and they will be subject to the order the moment their properties are returned to them, whether the Director General complies with the order or not. If it was right to subject them presently to the order, it is right that they should be allowed presently to dispute it, and we think there can be no doubt that the water carriers, who can only escape from the order by withdrawing from joint arrangements with the land carriers and making entirely new dispositions, and all the carriers who will be bound by it when their properties are returned to them, will be subjected to damage irreparable within the meaning of the law. It would be impossible for the carriers in many cases to collect what they have paid out or lost, if the Supreme Court were to hold that the order was not within the power of the Commission."

"The motion to dismiss the petition is denied, and the motion for a preliminary injunction is granted."

The dissenting opinion of Mr. District Judge Learned Hand is reproduced verbatim in the notes in the above case.<sup>3</sup>

In *United States v. Alaska S. S. Co.*<sup>4</sup> the United States Supreme Court, without determining this question of jurisdiction, and for the reason that the case had been rendered moot by the passage of the Transportation Act, 1920, ordered the petition dismissed without costs to either party and without prejudice to the right of the complainants to assail in the future any order of the Commission prescribing bills of lading after the enactment of the Transportation Act. Mr. Justice



Day delivered the opinion of the court as follows: "A petition was filed in the United States district court for the southern district of New York by numerous interstate carriers and carriers by water against the United States and the Interstate Commerce Commission to set aside an order of the Interstate Commerce Commission dated March 14, 1919, requiring the carriers to use two certain modified bills of lading, one pertaining to domestic and the other to export transportation. The cause came on for hearing upon application for a temporary injunction and upon a motion to dismiss the petition. The hearing was had before three judges, a circuit judge and two district judges. A majority concurred in holding that the Interstate Commerce Commission had no authority to prescribe the terms of carriers' bills of lading, and that in any event there was no power to prescribe an inland bill of lading depriving the carriers of the benefits of certain statutes of the United States limiting the liability of vessel owners. 259 Fed. 173. One of the district judges dissented, holding that the Commission had the power to prescribe bills of lading, and that the particular bills of lading in question were within the authority of the Commission. An order was entered refusing to dismiss the petition, and an injunction *pendente lite* was granted. From this order an appeal was taken directly to the court under the Statute of October 22, 1913. 38 Stat. at L. 220, chap. 32.

"It appears that the matters in controversy as to the authority of the Commission and the character of the bills of lading were subjects of much inquiry before the Commission, where hearings were had, and an elaborate report upon the proposed changes in carriers' bills of lading resulted in the adoption by the Commission of the two bills of lading. 52 Inters. Com. Rep. 671.

"Pending this appeal Congress passed on February 28, 1920, the act known as the 'Transportation Act of 1920,' which terminated the Federal control of railroads, and amended in various particulars previous acts to regulate interstate commerce. In view of this act of Congress this court, on March 22, 1920, entered an order requesting counsel to file briefs concerning the effect of the act upon this cause. Briefs have been filed, and we now come to consider the altered situation arising from the new legislation, and what effect should be given to it in the disposition of this case.

"The thing sought to be accomplished by the prosecution of this suit was an annulment of the order of the Commission, and an injunction restraining the putting into effect and operation of such order, which prescribed the two forms of bills of lading. The temporary injunction granted was against putting into effect the Commission's order prescribing the forms of the bills of lading.

"The Transportation Act of 1920, passed pending this appeal, makes it evident (and it is in fact conceded in the brief filed by appellants) that changes will be required in both forms of bills of lading in order that they may conform to the requirements of the statute. We need not now discuss the details of these changes. It is sufficient to say that the act requires them as to both classes of bills. We are of opinion that the necessary effect of the enactment of this statute is to make the cause a moot one. In the appellant's brief it is insisted that the power of the Commission to prescribe bills of lading is still existent,

and has not been modified by the provisions of the new law. But that is only one of the questions in the case. It is true that the determination of it underlies the right of the Commission to prescribe new forms of bills of lading, but it is a settled principle in this court that it will determine only actual matters in controversy essential to the decision of the particular case before it. Where by an act of the parties, or a subsequent law, the existing controversy has come to an end, the case becomes moot, and should be treated accordingly. However convenient it might be to have decided the question of the power of the Commission to require the carriers to comply with an order prescribing bills of lading, this court 'is not empowered to decide moot questions or abstract proposition, or to declare, for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it. No stipulation of parties or counsel, whether in the case before the court or in any other case, can enlarge the power, or affect the duty, of the court in this regard.' *California v. San Pablo & T. R. Co.*, 149 U. S. 308, 314, 37 L. ed. 747, 748, 13 Sup. Ct. Rep. 876; *United States v. Hamburg-Amerikanische, Packetfahrt-Actien Gesellschaft*, 239 U. S. 466, 476, 60 L. ed. 387, 391, 36 Sup. Ct. Rep. 212, and previous cases of this court therein cited.

"In the present case what we have said makes it apparent that the complainants do not now need an injunction to prevent the Commission from putting in force bills of lading in the form prescribed. The subsequent legislation necessitates the adoption of different forms of bills in the event that the power of the Commission be sustained. This legislation, having that effect, renders the case moot. *Berry v. Davis*, 242 U. S. 468, 61 L. ed. 441, 37 Sup. Ct. Rep. 208.

"In our view the proper course is to reverse the order, and remand the cause to the court below with directions to dismiss the petition, without costs to either party, and without prejudice to the right of the complainants to assail in the future any order of the Commission prescribing bills of lading after the enactment of the new legislation. *United States v. Hamburg American Line* and *Berry v. Davis*, *supra*. And it is so ordered."

In view of the foregoing the bills of lading forms prescribed by the Commission were never put into use. Consideration is now being given by the Commission under Docket No. 4844 to the matter of preparing a new uniform bill of lading to meet the changes which have taken place in the law and it is expected that the Commission's report in that case will also contain a form of uniform live stock contract. However, the Commission is not in a position at this time to advise definitely when the Commission's report will be issued or what information such report may contain.<sup>5</sup>

See "*Bills of Lading and Contracts of Shipment*," Chapter 8, *ante*.

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1. In the Matter of Bills of Lading (1919), 52 I. C. C. Rep. 671, 685; *Larkin Co. v. Erie & W. T. Co.* (1912), 24 I. C. C. Rep. 645, 647; *Shaffer & Co. v. Chicago, R. I. & P. Ry. Co.* (1911), 21 I. C. C. Rep. 8, 10.

2. *Alaska S. S. Co. v. United States* (Interstate Commerce Commission intervener), (July 15, 1919), 259 Fed. Rep. 713. Remanded with instructions to dismiss, *United States v. Alaska S. S. Co.* (May 17, 1920), 253 U. S. 113, 40 Sup. Ct. Rep. 448, 64 L. Ed. 808.



3. The following is the dissenting opinion of Mr. District Judge Learned Hand in *Alaska S. S. Co. v. United States* (Interstate Commerce Commission intervener) (July 15, 1919), 259 Fed. Rep. 713, 716, et seq.

"I own that, had it not been for the conclusion of my Brothers, I should have thought the jurisdiction of the Commission beyond any question; but their decision, of course, shows that my certainty was wrong, and as the case will go up it is fair to the respondents that I should state my reasons for a contrary conclusion. Under section 1 of the Act to Regulate Commerce (Comp. St. Sec. 8563) it is made the duty of all common carriers 'to establish \* \* \* just and reasonable regulations and practices affecting \* \* \* the issuance, form, and substance of \* \* \* bills of lading.' I do not understand that any one questions that the duty imposed by this language upon carriers includes the subject-matter which the Commission assumed to regulate in this case, and, indeed, I cannot see how any language could be more explicit than that which Congress has used. I may start, therefore, with the assumption that it is the duty of the carriers to regulate in accordance with justice the form and substance of their bills of lading.

"The issue in the case is whether the visitatorial powers of the Commission extend to such regulations, and this question is conceded to be determined by the language used in section 15 (Comp. St. Sec. 8583) which reads as follows:

"'Whenever \* \* \* the Commission shall be of opinion that any \* \* \* regulations, or practices whatsoever of such carrier or carriers subject to the provisions of this act are unjust or unreasonable \* \* \* or otherwise in violation and empowered to determine and prescribe what \* \* \* regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, \* \* \* and shall conform to and observe the regulation or practice so prescribed.'

"It is quite true that this language does not specifically repeat all the subject-matter of the duties imposed upon the carriers by section 1, but it seems to me quite clear, if one reads the two sections in the light of their structural relation, that the Commission's jurisdiction under section 15 is intended to be coextensive with the duties imposed upon the carrier under section 1. Once the carriers act, the Commission, within the limits prescribed by law, is given power to examine their practices, correct them, and make reasonable and lawful substitutes, which they are bound to follow. I do not quite see by what reasoning it is supposed that the Commission under section 15 is limited to supervision over rates or charges, in view of the motion, not only of rates and charges, but 'any individual or joint classification, regulations, or practices whatsoever.' While I prefer to rest my decision upon the general structure of the statute, rather than upon any specific language, the comprehensive intent is significant which is expressed by the words 'practices whatsoever'.

"The *Tank Car Case*, 242 U. S. 208, 37 Sup. Ct. 95, 61 L. ed. 251, does not give any color to the petitioner's position. There the Commission tried to compel the roads to supply public tank cars, which necessarily involved an increase in their equipment, and the question involved was whether it was a 'practice' within the meaning of section 1, to furnish them or not to furnish them. Taken verbally alone, the language was not apt to express such an idea, and the consequence of the Commission's interpretation obviously put carriers within its control in a way which nothing else in the act indicated. The Supreme Court held that the Commission had not been authorized to require the roads generally to furnish new equipment to any extent that might be necessary. In the face of the explicit mention of bills of lading in section 1 the analogy of the case is not apparent.

"As I think the Commission had power, therefore, to enter into the subject-matter and prescribe legal and reasonable bills of lading, it becomes necessary to consider whether the bill of lading actually prescribed was valid in all its particulars. In the first place, I must assume on these motion papers that the decision of the Commission, in all respects in which evidence might support it, is properly supported, for, although the petition in some instances alleges that there was no evidence before the Commission justifying its finding, that allegation is denied, and I must disregard it on motion for preliminary injunction. The question, therefore, simply is whether, in any instance, the decision of the Commission is such that it could be justified by no evidence whatever, in short, that it is contrary to law.

"The first question is as to the elimination of the exemption for loss and injury due to strikes and riots, which the Commission struck out because it thought it illegal after enactment of the Carmack and Cummins Amendments (Act June 29, 1906, c. 3591, Sec. 7, pars. 11, 12, 34, Stat. 595, and Act March 4, 1915, c. 176, 38, Stat. 1196 (Comp. St. Sections 8592, 8604a, 8604aa)). Now the Carmack Amendment is not to be taken either as narrowing or widening the common-law duties of carriers. The petitioners suppose that the phrase, 'caused by it,' narrowed those duties, but I cannot agree. It occurs in that part of the amendment which extends the liabilities of the initial carrier to the defaults of a connecting carrier, and is used only as a convenient way of describing those liabilities. It was in no sense an effort to define anew the duties of the carrier, which the statute took over from the common law. This was the meaning of the Supreme Court, both in *Adams Express Co. v. Croninger*, 226 U. S. 491, 506, 507, 33 Sup. Ct. 148, 57 L. ed. 314, 44 L. R. A. (N. S.) 257, and in *Cincinnati, etc. Ry. v. Rankin*, 241 U. S. 319, 326, 36 Sup. Ct. 555, 60 L. ed. 1022, L. R. A. 1917A, 265.

"There would, indeed, be insuperable difficulties in construing the words otherwise. No one asserts that the phrase limits the liabilities of the carriers to losses



positively caused by them, yet if it includes negligence, on the theory that omissions may be the 'cause' of loss, there is no warrant in the language used for saying that only such losses are 'caused' by omission as are 'caused by' the absence of reasonable care. If omission to prevent a loss be a cause of loss, then the loss is as much 'caused by' the omission of any precaution whatever through which it might have been prevented as of reasonable precaution. Reasonable care has nothing to do with the carrier's duties, and the decision of the Supreme Court in *Cincinnati, etc., Ry. v. Rankin*, *supra*, is directly to that effect.

"If, then, the Carmack Amendment imposed upon the carriers, their duties at common law, the second clause of that amendment prohibits their exemption by contract from the duties so imposed, for the prohibition relates to 'the liability hereby imposed.' Before the Cummins Amendment the Supreme Court had held in a number of cases that while the carrier could not exempt itself from liability, it might limit its amount; but the Cummins Amendment, which took away that right, necessarily took from the carrier any modification whatever of its common-law duties. Nor is there anything in any of the decisions which seems to me to contradict that conclusion. *Penn. R. R. v. Olivit Brothers*, 243 U. S. 574, 37 Sup. Ct. 468, 61 L. ed. 908, only decided that the carrier was not liable for damages caused by delay, as indeed he was not at common law in any event, at least unless the delay was due to his negligence. That case is not in point for other reasons.

"It therefore appears to me that the clause struck out by the Commission was illegal, and it was not necessary that any evidence should be taken upon it. It was fairly within the scope of the order of May 6, 1912, which in most general terms invited reconsideration of the bill of lading as it then stood, and though the report of the Commission states that the matter was not in issue, there was no evidence which could have been material to the issue if one had been framed. I conclude, therefore, that the action of the Commission was right in this respect.

"The second question at issue is the clause limiting the liability of the initial carrier to its own line when lawful. I do not find any such provision in the domestic bill of lading proposed by the carriers, but if it was there, and was eliminated, I see no ground for complaint. The Carmack Amendment expressly enacted the contrary, and there are no exceptions from it which could give any scope to the clause. The petitioners suggest that the carrier might be liable under the bill of lading for a default of the connecting carrier as warehouseman, except for the insertion of that clause. If he were so liable, the clause would not protect him, for the Carmack Amendment imposes the duty of warehousing in the terminal carrier as a part of 'transportation,' and, as it imposes it, so also it forbids its exemption or limitation by amendment. In *Cleveland, etc., R. R. v. Dettelbach*, 239 U. S. 588, 36 Sup. Ct. 177, 60 L. ed. 453, it was decided, although the contrary was the law of the state, that a limitation of liability in the bill of lading protected the terminal carrier while acting as warehouseman. This was before the Cummins Amendment, and while carriers could limit their liability. The theory of the case was that the federal bill of lading covered the duties of warehousing, as the Carmack Amendment had affected it before. The petitioners' suggestion is met by that case.

"The third question is as to the liability for shipments delivered at private sidings. At worst, the question was within the power of the Commission to determine in accordance with evidence. *Prima facie*, the carrier remains such after physical receipt and until he has delivered the goods, and in the absence of some agreement it is not delivery to shunt cars upon a siding. It is doubtful whether the Commission has any power whatever to provide for the termination of such liability prior to actual delivery. But that question is not raised here.

"The fourth question is as to the release of the consignor from liability for freight, if delivered to him without requiring payment of freight. The illegality of the Commission's order in this respect is not strenuously urged. It seems to me so clearly within the purview of its powers, that I think it unnecessary to discuss it in detail.

"The fifth question concerns the provision that the carrier shall bear the burden of proof on all issues of negligence. The petitioners assert that this changed their liability and is illegal on that account. A change in the burden of proof, however, has not been generally so regarded. As in the case of rules of evidence (*Downs v. Blount*, 170 Fed. 15, 95 C. C. A. 289, 31 L. R. A. (N. S. 1076) and of presumptions (*Howard v. Moot*, 64 N. Y. 262) the Legislature may change the burden of proof, even to affect existing rights and duties (*Chandler v. Northrup*, 24 Barb. (N. Y.) 129; *Wallace v. West N. C. R. R. Co.*, 104 N. C. 442, 10 S. E. 552). If so, the petitioners are wrong in supposing that a change in the burden of proof changes their liability. Rather it falls within the administrative powers of the Commission, and it can hardly be suggested that justice does not require the carrier, who has all the information, to bear the burden of proof upon that issue.

"The sixth question is of the valuation of the loss or injury at the place of origin. In most cases the actual value of the goods which the carrier must pay under the Cummins Amendment would at common law have been determined at the place of destination. It is not necessary to say that this applies in all cases. At common law the carrier must pay for the actual value of the goods and it might be urged that the Commission had done all that in any event it had the right to do when it struck out all mention of the subject from the bill of lading. It need not, however, go so far as this. It is possible that the Commission might have found, in the exercise of its administrative power, that the valuation at the place of shipment, or at the place of destination, was a convenient regulation to compel the shipper to agree to. The only question here is whether it might leave it without any regulation at all.



"The seventh provision is as to whether the carrier shall remain liable as such during 'free time' Of the three rules under which termination of the carrier's liability is decided, that which has by far the greater weight of authority is known as 'the New York rule.' I have found no federal case upon the subject, except *Howe v. The Lexington*, 12 Fed. Cas. 661 (No. 6,767a) an opinion of Judge Betts, which seems to follow the New York rule, which is also the English rule. As stated by Justice Lurton in *Adams Express Company v. Croninger*, all the liabilities of the carriers are now to be determined by federal law, and on a question, like this, of general commercial law, we act in accordance with our own understanding. Under the 'New York rule' the carrier must give notice to the consignee, when possible, and give him further a reasonable time to take away his goods, and, if he fails, the carrier must put them in a safe place. These acts of the carrier are a substitute for actual delivery, which in the earlier cases he was charged to make. Now 'free time' means that the carrier has no right to charge for care of the goods, because his carrier's charge covers the service, and as soon as he may charge for storage it would seem that those duties must have terminated. Prima facie, at least, the two periods are theretore coextensive. This record does not contain any of the evidence on which the Commission based its finding, and I have nothing to go on, therefore, but presumption. Until the hearing, I see no reason to disturb the finding or the order based upon it.

"The final question is the elimination of the customary clauses which protect the water lines, on the theory that the Carmack and Cummins Amendments override the Harter Act and those other acts specifically affecting shipping. So far as concerns the statute limiting the liability of shipowners, it seems unnecessary to hold that the amendments have this effect. They only provide that the carriers may not exempt themselves from their duties by contract. While the carrier remains liable notwithstanding that contract, the extent of his liability is still subject to provisions of all other positive law. It is true, of course, that the result may be that the initial carrier is liable generally, and has only a limited recourse over against the water carrier. If this be an injustice, it is one which arises from the liability statute, and not from the Carmack and Cummins Amendments.

"As to the Harter Act, however, I can see no escape from the conclusion that there is a conflict between it and the amendments, in which the earlier statute must yield. But the petitioners argue that the last clause of the third paragraph of section 15 (Comp. St. Section 8583) shows that the purpose was to leave water carriers subject only to the law applicable to transportation by water. The words are as follows:

"Any transportation by water affected by this act shall be subject to the laws and regulations applicable to transportation by water."

"Now the act, with certain exceptions not necessary to consider, does not affect any transportation which is wholly by water, but only when partly by rail and partly by water (section 1 (section 8563)), and indeed the clause just quoted from section 15 immediately follows a provision, perhaps unnecessary, which denies power to the Commission to fix any rates for water transportation solely. But even textually the position of the petitioners is not sound, for the statute does not say that water transportation affected by the act shall be 'subject only' to the laws applicable to the transportation by water. There is nothing exclusive in the language, and the more natural interpretation of it would seem to be that it shall be 'subject also' to the laws and regulations applicable to water transportation. Indeed, the language fits better with the purpose to make water law applicable, wherever it does not conflict, than with the purpose to make it supersede the act.

"Moreover, if one considers the effect of the interpretation which the petitioners desire, its meaning is much reinforced, for the act and its equitable regulation of transportation, both by land and by land and water, and it can hardly be supposed that provisions like the Carmack and Cummins Amendments were intended to subject railroads to one kind of obligation and the connecting water carriers to another. At least, no valid reason suggests itself for such a distinction, when all had been free before those amendments to protect themselves in exactly the same way. It is true that the water carriers retain an advantage under the Limitation Act; but to hold that they may exempt themselves altogether is not only to give them discriminatory advantage without any reason, but is to subject the railroads to their liabilities without any recourses, because I do not see how the initial carrier on any hypothesis could protect himself from the default of the water carrier. In prescribing a unitary system for through transportation, it seems to me hardly conceivable that Congress would have introduced, without any apparent reason, such inequalities as these.

"In conclusion, therefore, I see no reason to hold that the Commission has exceeded its power in any part of what it did. It may, of course, transpire upon the hearing that some of the findings were without basis in evidence, and, if so, the petitioners will have the advantage of that fact; but upon this record it is my opinion that no interlocutory injunction should issue.

"The motion to dismiss the petition, however, should be denied."

4. *United States v. Alaska S. S. Co.* (May 7, 1920), 253 U. S. 113, 40 Sup. Ct. Rep. 448, 64 L. ed. 808, remanding for dismissal. *Alaska S. S. Co. v. United States* (Interstate Commerce Commission intervenor), (July 15, 1919), 250 Fed. Rep. 713. On March 22, 1920, the Supreme Court requested to file briefs concerning the effect upon the issues involved resulting from the act of Congress terminating the Federal control of railroads and amending the Act to Regulate Commerce in certain particu-

lars, approved February 28, 1920 (41 Stat. L. 497). *United States v. Alaska S. S. Co.* (March 22, 1920), 252 U. S. 572, 40 Sup. Ct. Rep. 396, 64 L. Ed. 722.

The provision of the Act referred to is Section 25 of the Interstate Commerce Act which was added by the Transportation Act of February 28, 1920. This section relates entirely to foreign commerce, and, in addition to requiring the promulgation of certain information concerning vessel rates and reservation of steamship space, requires railroad carriers to issue through bills of lading on export traffic. This section further provides that the Interstate Commerce Commission shall, in such manner as will preserve for the carrier by water the protection of limited liability provided by law, make such rules and regulations not inconsistent with the statute as will prescribe the form of such through bill of lading. This entire section is confined to export traffic and obviously, inasmuch as this section specifically authorized the Commission to prescribe the form of through bills of lading on export traffic, as far as the form of the export bill of lading which previously prescribed by the Commission is concerned, that question was a moot one in the case before the Supreme Court. However, the Transportation Act of February 28, 1920, has not changed in any respect the law as it stood prior to the enactment of such statute with reference to bills of lading on domestic commerce and the power of the Interstate Commerce Commission to prescribe the form and conditions of the bill of lading to be used in interstate commerce. This being true, it would certainly seem that the question of the power of the Interstate Commerce Commission to prescribe the form of the bill of lading on domestic traffic was not made a moot one by the Transportation Act of February 28, 1920, and that the jurisdiction of the Commission in the premises is no different at the present time that it was prior to the enactment of the Transportation Act of February 28, 1920.

5. Extract from letter of Interstate Commerce Commission, office of the Secretary, addressed to Traffic Law Service Corporation, under date of July 22, 1921, file 69895.

2020-C. POWER OF INTERSTATE COMMERCE COMMISSION TO AUTHORIZE OR REQUIRE RATES DEPENDENT UPON A DECLARED OR RELEASED VALUATION.

By the second "Cummins Amendment" the provisions of the first "Cummins Amendment" which invalidated all limitations of the carrier's liability for loss, damage, or injury to property transported were made inapplicable to baggage, and to property except ordinary live stock as to which "the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property." In connection with the quoted exception, the Commission was empowered "to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation." It is thus seen that the second "Cummins Amendment" placed rates and ratings dependent upon the value "declared in writing by the shipper," and those predicated on the value "agreed upon in writing as the released value of the property" in the same category. Both are unlawful until expressly authorized or required by the Commission.<sup>1</sup>

Both the adjustment of rates upon the class of articles, based upon difference in valuation, as well as the acceptance of stipulations in the carrier's bill of lading which affect the liability declared by the "Carmack Amendment," are administrative duties of the Commission. To the extent that such limitations of liability are not forbidden by law, they become, when filed, a part of the rate.<sup>2</sup>

1. *Silk Association of America v. Pennsylvania Rd. Co.* (1918), 50 I. C. C. Rep. 50, 51; citing, *In the Matter of Express Rates, Practices, Accounts, and Revenues (Released Rates)*, (1917), 43 I. C. C. Rep. 510; *Live Stock Classification* (1917), 47 I. C. C. Rep. 335; *Williams Co. v. Hartford & N. Y. Transportation Co.* (1918), 48 I. C. C. Rep. 269.

2. *Kansas City S. Ry. Co. v. Carl* (1913), 227 U. S. 639, 33 Sup. Ct. Rep. 391, 57 L. Ed. 683, 689.



## 2021. Penalties and forfeitures—Criminal proceedings.

### 2021-A. FILING OF FRAUDULENT CLAIMS AGAINST CARRIERS.

In a prosecution under Act to Regulate Commerce, as amended by act of March 2, 1889, and Act of June 18, 1910, against a corporation for fraudulent claim for injury to a shipment, a corporate officer who signed letters making claims for injury to a shipment, is entitled to testify as to his intent, it appearing that the claims were prepared by his bookkeeper, for the corporation could act only through its officers or agents, and the intent of the officer is that of the corporation.<sup>1</sup>

Where it was asserted that a claim against a railroad company was fraudulent and that the pressing of the claim was a violation of the Act to Regulate Commerce, as amended, the acts and sayings of one prosecuting or pressing the claim are generally admissible on the question of intent, and he may also testify as to his intention.<sup>2</sup>

An indispensable element of the charge in the indictment was that the defendant filed with the St. Louis, I. M. & S. Ry. Co. a fraudulent claim for an excessive amount of damages. The "filing" of a paper or claim with a corporation is not complete until the document is delivered to and received by an officer or agent thereof who had authority to receive, file, or act upon it. There was no substantial evidence of any such filing of the claim, or of any of the documents making it, with any such officer or agent of the railroad company, and for that reason the court should have instructed the jury to return a verdict for the defendant.<sup>3</sup>

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1. *Laser Grain Co. v. United States* (1918), 250 Fed. Rep. 826.

2. *Ibid.*

3. *Ibid.*

### 2021-B. MISSTATEMENT BY SHIPPER OF TRUE VALUE OF PROPERTY.

Carriers may lawfully establish schedules of charges applicable to a specific commodity and graduated reasonably according to value. When such rates are published shippers are entitled to the rate corresponding to the actual value of the property offered by them for transportation. Shippers are not entitled under such rates to understate the actual value of shipments for the purpose of obtaining the rate applicable upon articles of less value. The valuation stated to carriers should correspond with the actual value as shown by invoices, etc. Shippers misstating the value of property for the purpose of obtaining the rate applicable to property of less value are guilty of misbilling and are subject to prosecution under Section 10 of the Act to Regulate Commerce.<sup>1</sup>

Upon an inquiry from a banking house whether it may lawfully declare a value of \$5,000 upon a package of negotiable bonds of the market value of \$10,000 and pay the express charges on the basis of the declared value, upon the understanding that in case of the loss of the bonds the express company will be responsible only for the amount so declared, it was held that a shipper falsely declaring the value of a package delivered to an express company for transportation violates Section 10 of the Act.<sup>2</sup>

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1. Conf. Rul. Bul. Rule 295 (Nov. 7, 1910).

2. Conf. Rul. Bul. Rule 58 (April 7, 1908).

## 2022. Rights existing under the law at the time of passage of initial-carrier's-liability clause, preserved.

### 2022-A. PROVISIONS OF THE STATUTE.

Section 20 (11) of the Interstate Commerce Act contains the following proviso:

That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

### 2022-B. EFFECT OF PROVISIO.

Rights and remedies conferred by existing state laws, where a shipment accepted by a carrier for interstate transportation has been lost, injured, or damaged, were not continued in force by the proviso in the "Carmack Amendment" of June 29, 1906, to the Act of February 4, 1887, that nothing therein contained shall deprive the holder of the receipt or bill of lading of any remedy or right of action which he has under existing law, but such proviso only preserves to such holder any right or remedy which he may have had under existing Federal law at the time of his action.<sup>1</sup>

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1. *Adams Express Co. v. Croninger* (1913), 226 U. S. 491, 33 Sup. Ct. Rep. 148, 57 L. Ed. 314.

### 2022-C. MEANING OF PHRASE "EXISTING LAW."

In Interstate Commerce Act, Section 20, as amended by Act June 29, 1906, Section 7, regulating liability of initial carriers, the proviso that nothing in the section shall deprive the shipper "of any remedy or right of action which he has under the existing law," means the common law as understood in the Federal Courts, and excludes changes made by State statutes.<sup>1</sup>

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1. *Lysaght, Ltd v. Lehigh V. Rd. Co.* (1918), 254 Fed. Rep. 351, 353; citing, *Adams Express Co. v. Croninger* (1913), 226 U. S. 491, 33 Sup. Ct. Rep. 148, 57 L. Ed. 314; *Southern Express Co. v. Byers* (1916), 240 U. S. 614, 36 Sup. Ct. Rep. 410, 60 L. Ed. 825; *Southern Ry. Co. v. Prescott* (1916), 240 U. S. 639, 36 Sup. Ct. Rep. 469, 60 L. Ed. 836. See also, *Schwartz v. Panama Rd. Co.*, 155 Cal. 742, 748, 133 Pac. 196; *Louisville & N. Rd. Co. v. Warfield*, 6 Ga. App. 550, 552, 65 S. E. 308; *Blackner & Post Pipe Co. v. Mobile & O. Rd. Co.* (Mo. 1909), 119 S. W. 1, 10; *Varnville Furniture Co. v. Charleston & W. C. Ry. Co.* (S. C. 1913), 79 S. E. 700, 708.

### 2022-D. SECTION 20 OF THE ACT NOT RETROACTIVE.

It would seem to be the law that where a contract of transportation was executed prior to the "Cummins Amendment," and suit was brought after the amendment was effective, it did not apply, as there is nothing in the Act to indicate that it was intended to have a retroactive effect.<sup>1</sup>

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1. *Betka v. Houston & T. C. Rd. Co.* (Tex. 1916), 189 S. W. 532.

### 2022-E. RIGHT OF CARRIER TO SELL UNCLAIMED GOODS FOR ACCRUED CHARGES NOT AFFECTED BY SECTION 20 OF THE ACT.

In the absence of inferred regulations by Congress or the Interstate Commerce Commission, a State statute covering the sale by a carrier of unclaimed freight for freight storage charges prevails as to interstate shipments.<sup>1</sup>

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1. *Norfolk & S. Rd. Co. v. Newburn Iron Works & Supply Co.* (N. C. 1916), 90 S. E. 149.



**2023. Jurisdiction and venue of actions under Section 20 of the Act.****2023-A. JURISDICTION OF STATE COURTS OVER ACTIONS UNDER SECTION 20 OF THE ACT.**

In *Galveston, H. & S. A. Ry. Co. v. Wallace*<sup>1</sup> the United States Supreme Court, per Mr. Justice Lamar, stated: "The real question, therefore, presented by this assignment of error, is whether a state court may enforce a right of action arising under an act of Congress.

"Statutes have no extraterritorial operation, and the courts of one government cannot enforce the penal laws of another. At one time there was some question both as to the duty and power to try civil cases arising solely under the statutes of another state. But it is now recognized that the jurisdiction of state courts extends to the hearing and determination of any civil and transitory cause of action created by a foreign statute, provided it is not of a character opposed to the public policy of the state in which the suit is brought. Where the statute creating the right provides an exclusive remedy, to be enforced in a particular way, or before a special tribunal, the aggrieved party will be left to the remedy given by the statute which created the right. But jurisdiction is not defeated by implication. And, considering the relation between the Federal and state government, there is no presumption that Congress intended to prevent state courts from exercising the general jurisdiction already possessed by them, and under which they had the power to hear and determine causes of action created by Federal statute. *Robb v. Connolly*, 111 U. S. 637, 28 L. ed. 546, 4 Sup. Ct. Rep. 544.

"On the contrary, the absence of such provision would be construed as recognizing that where the cause of action was not penal, but civil and transitory, it was to be subject to the principles governing that class of cases, and might be asserted in a state court as well as in those of the United States. This presumption would be strengthened as to a statute like this, passed not only for the purpose of giving a right, but of affording a convenient remedy."

Under section 20 of the Act, as amended June 20, 1906, making an initial carrier liable for loss, damage or injury to property occurring on the line of a connecting carrier, and providing that nothing in the amendment should deprive a shipper of any remedy or right of action under existing laws, and under section 22 of the Act, as amended in 1889, providing that nothing therein should in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of the Act should be in addition to such remedies, a state court has jurisdiction over a suit in assumpsit to recover damages for delay of an interstate shipment.<sup>2</sup>

Since an action against an initial carrier to recover for damage to an interstate shipment caused by a connecting carrier, though brought under the Carmack amendment to the Hepburn Act, is not an action based on a violation of the Interstate Commerce Act, but is an action based on the injury to the property, the state courts have jurisdiction, especially in view of the provision "that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law."<sup>3</sup>

Congress has so asserted, by the Carmack amendment of June 29, 1906, Stat. at L. 593, chap. 3591, Comp. Stat. its power over the subject of interstate shipments, the duty to issue bills of lading, and the responsibilities thereunder, as to preclude the application to an interstate commerce shipment of a local and exceptional rule of law which invests the innocent holder of a bill of lading with rights not available to the shipper, such as the right to rely on erroneous recitals in the bill of lading as to the date of the carrier's receipt of the goods.<sup>4</sup>

As the proper construction of a bill of lading relating to interstate commerce is a federal question, the acts of Congress and decisions of the Supreme Court of the United States are controlling, and must be followed by state courts.<sup>5</sup>

Congress by its acts has taken over the whole subject-matter of interstate commerce so as to supersede all special regulations, laws, and policies of particular states as to the carrier's liability for loss or damages to interstate shipments, and contracts for interstate shipments.<sup>6</sup>

1. *Galveston, H. & S. A. Ry. Co. v. Wallace* (1912), 223 U. S. 481, 32 Sup. Ct. Rep. 205, 56 L. Ed. 516. See also, *Central of Ga. Ry. Co. v. Sims*, 169 Ala. 295, 300, 53 So. 326; *St. Louis & S. F. Rd. Co. v. Heyser* (Ark. 1910), 130 S. W. 562; *Louisville & N. Rd. Co. v. Warfield*, 6 Ga. App. 550, 551, 65 S. E. 308; *Southern P. Co. v. Crenshaw*, 5 Ga. App. 675, 686, 63 S. E. 865; *Houston & T. C. Rd. Co. v. Lewis* (Tex. 1910), 129 S. W. 594; *Galveston, H. & S. A. Ry. Co. v. Crow* (Tex. 1909), 117 S. W. 70; *Galveston, H. & S. A. Ry. Co. v. Piper*, 52 Tex. Civ. App. 568, 572, 115 S. W. 107; *Fort Smith & W. Rd. Co. v. Aubrey* (Okla. 1913), 134 Pac. 1117, 1119; *Stevens & Russell v. St. Louis S. W. Ry. Co.* (Tex. 1915), 178 S. W. 810, 812.
2. *Pittsburgh, C. C. & St. L. Ry. Co. v. Mitchell* (Ind. 1910), 91 N. E. 735, 738.
3. *Louisville & N. Rd. Co. v. Scott*, 133 Ky. 724, 729, 118 S. W. 990; affirmed, *Louisville & N. Rd. Co. v. Scott* (1911), 219 U. S. 209, 31 Sup. Ct. Rep. 171, 55 L. Ed. 183.
4. *Atchison, T. & S. F. Ry. Co. v. Harold* (1916), 241 U. S. 371, 36 Sup. Ct. Rep. 665, 60 L. Ed. 1050.
5. *Aradalou v. New York, N. H. & H. Rd. Co.* (Mass. 1916), 114 N. E. 297.
6. *Piper v. Boston & M. Rd. Co.* (Vt. 1916), 97 Atl. 508, 90 Vt. 176; affirmed, *Boston & M. Rd. Co. v. Piper* (1918), 246 U. S. 439, 38 Sup. Ct. Rep. 354, 62 L. Ed. 820.

## 2023-B. REMOVAL OF CAUSES UNDER SECTION 20 OF THE ACT FROM STATE COURTS TO UNITED STATES COURTS.

### The Removal of Causes Act provides as follows:

No suit brought in a State court of competent jurisdiction against a railroad company, or other corporation, or person, engaged in and carrying on the business of a common carrier to recover damages for delay, loss of, or injury to property received for transportation by such common carrier under section twenty of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended June twenty-ninth, nineteen hundred and six, April thirteenth, nineteen hundred and eight, February twenty-fifth, nineteen hundred and nine, and June eighteenth, nineteen hundred and ten, shall be removed to any court of the United States where the matter in controversy does not exceed, exclusive of interests and costs, the sum or value of \$3,000.

A suit against a refrigerator transit company to recover for damages to an interstate shipment of fruit through improper stowage, handling, and icing is not removable to a Federal district court irrespective of the amount involved, on the theory that a primary liability on the part of such company under congressional legislation, otherwise than as a carrier, is asserted in the petition because it relies upon a contract between such company and the railway carrier by which the former assumed liability for damages of the kind alleged, or some of them, and the fact that the carrier was a party to the bills of lading and the controlling interstate tariffs, although such company was not, and also relies upon an alleged contract between such company and the carrier for the cars involved, and an implied undertaking



for proper care and service, and alleges a partnership with the carrier in these transactions, and that the said company caused the damage as agent for the carrier by furnishing cars with insufficient tanks, employing inexperienced men, and defectively stowing, and failing to ice the fruit, and that these acts constituted misfeasance on its part of the duties it owed to its principal, the carrier, and to the public at large.<sup>2</sup>

1. Removal of Causes Act. "An Act to amend an Act entitled An Act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, being Chapter 231 of 36th Stat. L. Approved, January 20, 1914, c. 11, 38 Stat. L. 278 (Public; No. 48; 63rd Congress, S. 3484).
2. *Emery & Co. v. American Refrigerator Transit Co.* (1918), 246 U. S. 634, 38 Sup. Ct. Rep. 414, 62 L. Ed. 912.

**2023-C. COURTS WILL TAKE JUDICIAL NOTICE OF THE EXISTENCE OF SECTION 20 OF THE INTERSTATE COMMERCE ACT.**

A State statute provided that "neither the evidence relied on by a party nor presumptions of law, nor facts of which judicial notice is taken, excepting private statutes, shall be stated in the pleadings." *HELD*, in a suit against an initial carrier to recover for damage to an interstate shipment caused by the connecting carrier it was not necessary for the plaintiff to plead the "Carmack Amendment" in order to avail himself of the benefit thereof.<sup>1</sup>

1. *Louisville & N. Rd. Co. v. Scott*, 133 Ky. 724, 727, 118 S. W. 990, affirmed, *Louisville & N. Rd. Co. v. Scott* (1911), 219 U. S. 209, 31 Sup. Ct. Rep. 171, 55 L. Ed. 183; *Southern P. Co. v. Crenshaw*, 5 Ga. App. 675, 680, 63 S. E. 865.

**2024. Conditions precedent to recovery in actions under Section 20 of the Act.**

Section 20 (11) of the Interstate Commerce Act contains the following proviso:

That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery.

**2025. Writ and process in actions under Section 20 of the Act.**

An initial carrier, when a foreign corporation, is not made liable to suit on the contract of shipment in a State in which it was not carrying on business in the sense which has heretofore been held necessary to confer jurisdiction because of any agency of a connecting carrier within that State, effected by the provisions of the "Carmack Amendment," of June 29, 1906, to the Interstate Commerce Act, requiring the initial carrier receiving freight for transportation in interstate commerce to obligate itself to carry to final destination, using the lines of connecting carriers as its agencies.<sup>1</sup>

A foreign railway company is doing business within the State, so far as the question of its amenability to service of process there is concerned, where its local representative undertakes to act for and represent it, negotiating for it, and in its behalf declining to adjust a claim made against it.<sup>2</sup>

1. *St. Louis, S. W. Ry. Co. v. Alexander* (1913), 227 U. S. 218, 33 Sup. Ct. Rep. 245, 57 L. Ed. 486.
2. *Ibid.*

## 2026. Parties in suits under Section 20 of the Act.

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### 2026-A. STATUTORY LIABILITY OF THE INITIAL CARRIER FOR LOSS, DAMAGE, OR INJURY TO PROPERTY TRANSPORTED IN INTERSTATE COMMERCE AND TO ADJACENT FOREIGN COUNTRIES.

See "*Statutory liability of the initial carrier for loss, damage, or injury to property transported in interstate commerce and to adjacent foreign countries*," Section 2005, *ante*.

### 2026-B. RIGHT OF SHIPPER TO PROCEED AGAINST THE NEGLIGENT CONNECTING CARRIER.

The liability imposed by the "Carmack amendment" on the initial carrier for loss on connecting lines does not preclude the right to enforce responsibility against the particular carrier, whether initial, intermediate, or terminal, on whose line the loss, damage, or injury was occasioned.<sup>1</sup>

See "*Liability of connecting carriers under Section 20 of the Act*," Section 2010, *ante*, and, "*Liability of the terminal carrier under Section 20 of the Act*," Section 2011, *ante*.

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1. *Lewis Poultry Co. v. New York C. Rd. Co.* (Me. 1918), 105 Atl. 109; *Conley v. Chicago, B. & Q. Rd. Co.* (Mo. 1916), 183 S. W. 1111.

### 2026-C. JOINING CONNECTING CARRIERS IN SUIT AS CO-DEFENDANTS DOES NOT RELIEVE THE INITIAL CARRIER.

Under the "Carmack Amendment" making the initial carrier liable for loss or damage caused by it or connecting carriers, a shipper is not prevented from recovering the entire loss from initial carrier by reason of the fact that he joints the connecting carriers as co-defendants to the suit.<sup>1</sup>

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1. *Missouri, K. & T. Ry. Co. v. Demere* (Tex. 1912), 145 S. W. 623, 626; *Baltimore C. & A. Ry. Co. v. Sperber & Co.* (Md. 1913), 84 Atl. 72, 74, 117 Md. 602.

### 2026-D. RIGHT OF CONSIGNORS, AS HOLDERS OF ORDER BILL OF LADING, TO SUE FOR DAMAGES UNDER SECTION 20 OF THE INTERSTATE COMMERCE ACT.

Where a bill of lading to order of consignee, issued to consignors, was deposited for collection with bank, which acting as their agent, presented it with draft to consignee, draft not being honored and bill of lading being returned to bank, consignors were holders of the bill of lading, entitled, under the "Carmack Amendment" to claim for loss of goods.<sup>1</sup>

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1. *Babbitt v. Grand Trunk W. Ry. Co.* (Ill. 1918), 120 N. E. 803.



## 2027. Pleadings in suits under Section 20 of the Act.

### 2027-A. PLEA BY THE INITIAL CARRIER THAT IT TRANSPORTED THE GOODS WITH REASONABLE DILIGENCE IS BAD ON DEMURRER.

In a suit for damages arising from delay brought against the initial and connecting carriers under the "Carmack Amendment," a demurrer is properly sustained to a plea by the initial carrier that it transported the goods with all due diligence, since under amendment the initial carrier is liable if the delay was caused by the connecting carrier.<sup>1</sup>

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1. *Baltimore, C. & A. Ry. Co. v. Sperber & Co.* (Md. 1913), 84 Atl. 72, 73; *Cincinnati, N. O. & T. P. Ry. Co. v. Smith & Johnston* (Ky. 1915), 176 S. W. 1013.

### 2027-B. EFFECT OF FAILURE OF PLAINTIFF TO JOIN CONNECTING CARRIERS AS CO-DEFENDANTS.

In a suit against the initial carrier under the "Carmack Amendment" the petition is not defective by reason of the fact that it fails to give the names of the connecting carriers, since the effect of the "Carmack Amendment" is to make the connecting carriers the agents of the initial carrier, and the latter may safely be presumed to know the name of its agents.<sup>1</sup>

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1. *Pecos & N. T. Ry. Co. v. Meyer* (Tex. 1913), 133 S. W. 309, 312.

### 2027-C. EFFECT OF SURRENDER OF BILL OF LADING ON THE RIGHT OF SHIPPER TO SUE.

The term "lawful holder" of the bill of lading as used in the "Carmack Amendment" making the initial carrier liable for loss or damage occurring on the line of the connecting carrier to such holder, comprehends the owner of the property transported or the one beneficially entitled to recover for the loss or injury, and manual possession of the bill of lading is not prerequisite to the right to suit.<sup>1</sup>

The fact that a shipper of live stock surrenders the bill of lading to the carrier in order to secure a drover's pass for the return trip does not prevent him from being the "lawful holder" of the bill of lading, within the meaning of the "Carmack Amendment" so as to deprive him of the right to sue for loss or damage under said amendment.<sup>2</sup>

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1. *Pecos & N. T. Ry. Co. v. Meyer* (Tex. 1913), 155 S. W. 309, 312.
  2. *Ibid.*

### 2027-D. RIGHT OF INITIAL CARRIER TO FILE CROSS-PETITION AGAINST THE RESPONSIBLE CONNECTING CARRIER.

The Interstate Commerce Act imposes upon an interstate voluntarily receiving property for transportation from a point in one State to a point in another State, liability to the holder of the bill of lading for loss anywhere enroute, with a right, when sued with the connecting carrier for loss occurring upon its line, by cross-petition over

against the connecting carrier for the amount of such loss or damage evidenced by the judgment against it.<sup>1</sup>

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1. *St. Louis & S. F. Rd. Co. v. First National Bank of Elk City* (Okla. 1917), 171 Pac. 467.

#### 2027-E. DEFENSE OF INITIAL CARRIER IN ACTIONS AGAINST IT UNDER SECTION 20 OF THE ACT.

In an action by a shipper against an initial carrier for loss of goods shipped in interstate commerce, as authorized by Section 20 of the Act, the carrier may make any proper defense which can be made in a court of law, and which any connecting carrier on the line of which the goods were lost or injured occurred, might make.<sup>1</sup>

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1. *Riverside Mills v. Atlantic C. L. Rd. Co.* (1909), 168 Fed. Rep. 987; affirmed, *Atlantic C. L. Rd. Co. v. Riverside Mills* (1911), 219 U. S. 186, 55 L. Ed. 167, 31 Sup. Ct. Rep. 164.

#### 2028. Evidence in suits under Section 20 of the Act.

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##### 2028-A. EVIDENCE OF ACTS OF CONNECTING CARRIERS IN A SUIT AGAINST THE INITIAL CARRIER.

Inasmuch as the initial carrier is liable under the "Carmack Amendment" for injuries caused to cattle by its connecting carriers, evidence of injuries done them by such carriers is admissible to prove the extent of such liability.<sup>1</sup>

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1. *Pecos & N. T. Ry. Co. v. Crews* (Tex. 1911), 139 S. W. 1049, 1051.

##### 2028-B. ADMISSIBILITY OF RATE SCHEDULES ON FILE WITH THE INTERSTATE COMMERCE COMMISSION.

Rate schedules of an interstate carrier on file with the Interstate Commerce Commission are admissible in evidence in an action against it to recover damages for delay in the delivery of an interstate shipment on the issue of the validity and effect of a provision in the bill of lading by which the carrier undertook to limit its liability to a specified sum.<sup>1</sup>

A railroad sued for failure to transport merchandise within a specified time, as orally agreed, cannot introduce evidence to prove that its tariff, established pursuant to regulations of the Interstate Commerce Commission, did not permit contracts for expedited shipments, not having pleaded the matter.<sup>2</sup>

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1. *Southern Express Co. v. Byers* (1916), 240 U. S. 612, 36 Sup. Ct. Rep. 410, 60 L. Ed. 825.
  2. *Vittucci Co. v. Canadian P. Co.* (Wash. 1918), 174 Pac. 981.

##### 2028-C. EVIDENCE OF DECISION IN A FORMER SUIT.

In an action for the freezing of carloads of potatoes, decision in a former suit, on a special contract, was the law of the case as to the defendant railroad in respect to the contract to carry, whether it was an interstate carrier as well as an initial carrier, and as to claims asserted under the "Carmack Amendment."<sup>1</sup>

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1. *Ross v. Maine C. Rd. Co.* (Me. 1915), 96 Atl. 223.



**2028-D. AGREEMENT OF CARRIER TO REIMBURSE SHIPPER FOR LOSS, NOT DISCRIMINATORY.**

An agreement of the agent of a railway company transporting goods for the plaintiff, upon discovery that the goods are in a defective condition on delivery, to reimburse the plaintiff for damages suffered by reason of deterioration of goods, is not an agreement for a rebate, sufficient to make it discriminatory within the interstate commerce law, nor does the fact that proof of the amount of damage is to be determined by plaintiff's agents alter the situation in that respect.<sup>1</sup>

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1. *Missouri, K. & T. Ry. Co v. Want & Co.* (Tex. 1915), 179 S. W. 903, 905.

**2028-E. ADMISSIBILITY OF REPARATION AWARD OF INTERSTATE COMMERCE COMMISSION.**

In an action for conversion by a carrier on refusal of the shipper to pay an excessive freight rate, the award of the Interstate Commerce Commission, determining the proper rate for the shipment, was admissible in evidence.<sup>1</sup>

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1. *Pecos & N. T. Ry. Co. v. Porter* (Tex. 1916), 183 S. W. 98, 99.

**2028-F. CONCLUSIVENESS OF SHIPPER'S SIGNED BILL OF LADING.**

A shipper of live stock is precluded from contending that his shipment was not made under the bill of lading, in view of his signature thereto and the "Carmack Amendment" requiring a written contract of shipment.<sup>1</sup>

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1. *Johnson v. Missouri P. Ry. Co.* (Mo. 1916), 187 S. W. 282.

**2028-G. PRESUMPTION OF LAWFUL CONDUCT OF CARRIER.**

In an action against an express company, it must be presumed that the company was conducting its business according to the Acts of Congress regulating interstate commerce.<sup>1</sup>

The rights and liabilities of the parties to an interstate railway shipment depend upon Federal legislation, the bill of lading, and common-law rules as accepted and applied in Federal tribunals.<sup>2</sup>

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1. *Tribble v. Southern Express Co.* (S. C. 1918), 96 S. E. 712.  
2. *Cincinnati, N. O. & T. P. Ry. Co. v. Rankin* (1916), 241 U. S. 319, 36 Sup. Ct. Rep. 555, 60 L. Ed. 1022.

**2029. Burden of proof in suits under Section 20 of the Act.**

**2029-A. SHIPPER NOT OBLIGED TO PROVE UPON WHAT LINE THE LOSS OR DAMAGE OCCURRED.**

The "Carmack Amendment" to the Interstate Commerce Act, declaring that the initial carrier shall be liable to the lawful holder of the bill of lading or receipt for any loss, damage, or injury caused by it or by any connecting carrier, does not impose upon the shipper the burden of establishing, in a suit against the initial carrier, that the loss was in fact caused by the initial or connecting carrier, but merely extends the common-law liability of the initial carrier to all losses, whether occurring on its line or that of a connecting carrier.<sup>1</sup>

In *Chicago & E. I. Rd. Co. v. Collins Produce Co.*<sup>2</sup> the United States Supreme Court, in affirming the judgment of the lower court, stated: "Suit against the carrier, based on the bill of lading, commenced in a state court, was removed to the appropriate district court of the United States.

"On the trial of the case the shipper introduced evidence tending to prove that the confiscation was due to the solocitation of representatives of the carriers, and to their false representation that the fowls were dying from lack of food and attention, and had been or were about to be abandoned by the caretaker, but the railroad company denied this and introduced evidence tending to prove that there was no such solicitation or false representation, and that the confiscation was rendered necessary by the exigencies of the situation and by the necessity for supplying food to the people rendered homeless by the flood.

"The trial court charged the jury:

"That it was the duty of the carrier to transport the property to destination, if it could do so; that it could not overcome the flood or the action of the military authorities, and that if the latter acted of their own volition the shipper could not recover; but that if the military authorities seized the consignment solely upon and by reason of the invitation of the railroad company, and if, but for the confiscation, the property or any part of it, in the exercise of ordinary care, could have been transported to its destination, then the defendant, the carrier, would be liable for the value of such part of it as the jury might find from the evidence could have reached its destination, to be determined by the invoice price at the point of shipment, less any deterioration caused by the delay solely incident to the flood.

"The verdict was for the shipper, and we are asked to review the judgment of the circuit court of appeals, affirming the judgment of the district court, entered upon that verdict.

"The first claim is that the court refused to rule that, by its terms, the Carmack Amendment (June 29, 1906, 34 Stat. at L. 595, chap. 3591, Sec. 7, Comp. Stat. 1916, Sections 8604a, 8604aa) casts upon the shipper the burden of proving affirmatively that the loss which occurred on a connecting line was 'caused by' the connecting carrier. But, assuming that the question is presented by the record, which is doubtful, *Galveston, H. & S. A. R. Co. v. Wallace*, 223 U. S. 481, 491, 56 L. ed. 516, 523, 32 Sup. Ct. Rep. 205, rules that, under the act as construed in *Atlantic Coast Line R. Co. v. Riverside Mills*, 219 U. S. 186, 205, 206, 55 L. ed. 167, 181, 182, 31 L. R. A. (N. S.) 7, 31 Sup. Ct. Rep. 164, in such a case as we have here the liability of the initial carrier is as if the shipment had been between stations in different states, but both upon its own line, and this renders the contention untenable. *Adams Exp. Co. v. Croninger*, 226 U. S. 491, 57 L. ed. 314, 44, L. R. A. (N. S.) 257, 33 Sup. Ct. Rep. 148, does not conflict with this conclusion. *Cincinnati, N. O. & T. P. R. Co. v. Rankin*, 241 U. S. 319, 326, 60 L. ed. 1022, 1025, L. R. A. 1917A, 265, 36 Sup. Ct. Rep. 555."

1. *Chicago & E. I. Rd. Co. v. Collins Produce Co.* (1916), 235 Fed. Rep. 857, 149 C. C. A. 169; affirmed, *Chicago & E. I. Rd. Co. v. Collins Produce Co.* (1919), 249 U. S. 186, 39 Sup. Ct. Rep. 189, 63 L. Ed. 552.

2. *Chicago & E. I. Rd. Co. v. Collins Produce Co.* (1919), 249 U. S. 186, 39 Sup. Ct. Rep. 189, 63 L. Ed. 552; affirming *Chicago & E. I. Rd. Co. v. Collins Produce Co.* (1916), 235 Fed. Rep. 857, 149 C. C. A. 169.



2029-B. PROOF NECESSARY IN AN ACTION AGAINST THE INITIAL CARRIER  
FOR DELAY TO GOODS.

In an action against the initial and connecting carrier, under the "Carmack Amendment," for damages arising from delay, it is only necessary to prove, in order to recover against the initial carrier, that the delay was caused either by the initial or connecting carrier.<sup>1</sup>

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1. *Baltimore C. & A. Ry. Co. v. Sperber & Co.* (Md. 1912), 84 Atl. 72, 74.

2029-C. PROOF OF DELIVERY OF AN INTERSTATE SHIPMENT TO THE INITIAL  
CARRIER AND FAILURE TO DELIVER THE SAME TO THE CONSIGNEE  
RAISES A PRESUMPTION OF NEGLIGENCE.

In *Galveston, H. & S. A. Ry. Co. v. Wallace*<sup>1</sup> the United States Supreme Court, per Mr. Justice Lamar, stated: "Under the Carmack amendment, as already construed in the *Riverside Mills Case*, wherever the carrier voluntarily accepts goods for shipment to a point on another line, in another state, it is conclusively treated as having made a through contract. It thereby elected to treat the connecting carriers as its agents, for all purposes of transportations and delivery. This case, then, must be treated as though the point of destination, was on its own line, and is to be governed by the same rules of pleading, practice, and presumption as would have applied if the shipment had been between stations in different states, but both on the company's railroad. Thus considered, when the holders of the bills of lading proved the goods had not been delivered to the consignees, the presumption arose that they had been lost by reason of the negligence of the carrier or its agents. The burden of proof that the loss resulted from some cause for which the initial carrier was not responsible in law or by contract was then cast upon the carrier. The plaintiffs were not obliged both to prove their case and to disprove the existence of a defense. The carrier and its agents, having received possession of the goods, were charged with the duty of delivering them, or explaining why that had not been done. This must be so, because carriers not only have better means, but often the only means, of making such proof. If the failure to deliver was due to the act of God, the public enemy, or some cause against which it might lawfully contract, it was for the carrier to bring itself within such exception. In absence of such proof, the plaintiffs were entitled to recover, and the judgment is affirmed."

The "Carmack Amendment" has the effect of annulling many of the stipulations universally found in bills of lading issued upon shipments of live stock and re-establishes the common-law rule that, when freight is delivered to a carrier in good condition and reaches its destination in bad condition, the presumption of negligence arises, throwing the burden upon the carrier of exonerating itself from liability by proof tending to detect the guilty carrier.<sup>2</sup>

The "Carmack Amendment" does not affect the question of the burden of proof in the case of loss of freight.<sup>3</sup>

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1. *Galveston, H. & S. A. Ry. Co. v. Wallace* (1912), 223 U. S. 481, 32 Sup. Ct. Rep. 205, 56 L. Ed. 523.  
2. *Chicago, R. I. & G. Ry. Co. v. Scott* (Tex. 1912), 156 S. W. 294, 297.  
3. *National Rice Milling Co. v. New Orleans & N. E. Rd. Co.* (La. 1912), 61 So. 708, 720. Dismissed for want of jurisdiction. *New Orleans & N. E. Rd. Co. v. National Rice Milling Co.* (1914), 234 U. S. 80, 34 Sup. Ct. Rep. 726, 58 L. Ed. 1223.

**2029-D. PROOF OF FILING TARIFFS CONTAINING A CHOICE OF RATES.**

Recitals in a bill of lading for an interstate shipment, signed by both parties, that alternative rates, based upon specified values, are offered by the carrier's published freight rates, constitute admissions by the shipper and sufficient *prima facie* evidence of a choice of rates, and cast upon him the burden of proving, in case he wishes to contradict his admissions, that the carrier had not complied with the requirements of controlling Federal legislation respecting the filing and publishing of its rate schedules.<sup>1</sup>

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1. *Cincinnati, N. O. & T. P. Ry. Co. v. Rankin* (1916), 241 U. S. 319, 30 Sup. Ct. Rep. 555, 60 L. Ed. 1022.

**2029-E. BURDEN OF PROOF ON CARRIER TO PROVE SHIPPER'S RELEASED VALUATION.**

The burden of proof is upon an interstate carrier, who has negligently lost property in transit, claiming a release to the amount of the shipper's declared or agreed value of such property to prove all the facts essential to such defense, including a valid stipulation of release.<sup>1</sup>

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1. *St. Louis & S. F. Rd. Co. v. Mounts* (Okla. 1914), 144 Pac. 1033, 1036.

**2029-F. BURDEN OF PROOF ON CARRIER TO PROVE VALIDITY OF BILL OF LADING.**

It does not follow in every case that, where tariffs have been filed with the Commission, the contracts to which such tariffs are applied have been approved by the Commission. The burden is upon the carrier to establish the validity of its bill of lading.<sup>1</sup>

Where a carrier relies on a special contract limiting its liability or showing nonliability, the burden is on it to show a valid contract, and to establish the reasonableness of the provisions upon which it relies. If there is no valid contract, such defense is not available.<sup>2</sup>

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1. *Norfolk & W. Ry. Co. v. Steele & Son* (Va. 1915), 86 S. E. 124, 127.
  2. *Toledo St. L. & W. Rd. Co. v. Milner* (Ind. 1915), 110 N. E. 756, 759.

**2029-G. WHEN QUESTION OF BURDEN OF PROOF BECOMES AN ACADEMIC ONE.**

The question of burden of proof to show negligence of carrier avoiding limitation of liability clause in bill of lading becomes purely academic, where the court goes fully into the facts and finds that there had been negligence.<sup>1</sup>

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1. *Bornesman & Co. v. New Orleans M. & C. Rd. Co.* (La. 1919), 81 So. 882.

**2030. Trial of actions under Section 20 of the Act.**

See "*Civil Proceedings in the Courts*," Chapter 47, *post*.



## 2031. Elements and measure of damages in suits under Section 20 of the Act.

### 2031-A. RESUMÉ OF SHIPPER'S MEASURE OF RECOVERY FOR LOSS, DAMAGE, OR INJURY TO PROPERTY TRANSPORTED IN INTERSTATE COMMERCE.

The words, "any loss, damage, or injury to such property," caused by the initial carrier or by any connecting carrier, are comprehensive enough to embrace all damages resulting from any failure to discharge a carrier's duty with respect to any part of the transportation to the agreed destination.<sup>1</sup>

The liability for some default in its common-law duty as a common carrier and not liability as an insurer, is what is imposed by Section 20 of the Interstate Commerce Act, under which a carrier receiving property for interstate transportation is required to issue a receipt or bill of lading therefor, and is made liable to the holder for "any loss, damage, or injury to such property *caused* by it," or by any connecting carrier to whom the property may be delivered.<sup>2</sup>

The rule of the common law is not an arbitrary fiat but an embodiment of the plain fact that the actual loss caused by the breach of a contract is the loss of what the contractee would have had if the contract had been performed, less the proper deductions.<sup>3</sup>

It is, therefore, apparent that each case must be decided with reference to its own particular facts, and that the simple rule is that the shipper is entitled to recover from the carrier for any loss, damage, or injury to the property caused by it, 100% of the damages sustained by him, or, in other words, the shipper is entitled to be made whole.

See "*Liability of initial carrier for the full actual loss, damage, or injury to the property transported, notwithstanding any limitation of liability, or limitation of the amount of recovery, or representation or agreement as to value,*" Section 2014, *ante*.

1. New York, P. & N. Rd. Co. v. Peninsular Produce Exchange of Maryland (1916), 240 U. S. 34, 36 Sup. Ct. Rep. 230, 60 L. Ed. 511, 513.
2. Adams Express Co. v. Croninger (1913), 226 U. S. 491, 33 Sup. Ct. Rep. 148, 57 L. Ed. 314.
3. Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co. (1920), 253 U. S. 597, 40 Sup. Ct. Rep. 504, 64 L. Ed. 801, 803, affirming Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co. (1919), 260 Fed. Rep. 835, 171 C. C. A. 561, affirming, McCaull-Dinsmore Co. v. Chicago, M. & St. P. Ry. Co. (1918), 252 Fed. Rep. 664.

### 2031-B. RIGHT OF SHIPPER TO RECOVER INTEREST ON CLAIMS INVOLVING LOSS, DAMAGE, OR INJURY TO PROPERTY TRANSPORTED IN INTERSTATE COMMERCE.

Under the authority of *McCaull-Dinsmore Co. v. Chicago, M. & St. P. Ry. Co.*<sup>1</sup> a shipper may recover from the carrier interest on all claims involving loss, damage, or injury to property transported by it in interstate commerce.

1. McCaull-Dinsmore Co. v. Chicago, M. & St. P. Ry. Co. (1918), 252 Fed. Rep. 664, affirmed, Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co. (1919), 260 Fed. Rep. 835, 171 C. C. A. 561; writ of certiorari granted, Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co. (1920), 64 L. Ed. 409, 251 U. S. 549, 40 Sup. Ct. Rep. 219, affirmed, Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co. (1920), 253 U. S. 597, 64 L. Ed. 801, 40 Sup. Ct. Rep. 504.

2031-C. RIGHT OF PLAINTIFF TO RECOVER COSTS AND DISBURSEMENTS IN A SUIT AGAINST DEFENDANT CARRIER INVOLVING LOSS, DAMAGE, OR INJURY TO PROPERTY IN INTERSTATE COMMERCE.

Under the authority of *McCaull-Dinsmore Co. v. Chicago, M. & St. P. Ry. Co.*<sup>1</sup> the plaintiff in a suit involving loss, damage, or injury to property in interstate commerce may recover against the defendant carrier its costs and disbursements.

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1. *McCaull-Dinsmore Co. v. Chicago, M. & St. P. Ry. Co.* (1918), 252 Fed. Rep. 664, affirmed, *Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co.* (1919), 260 Fed. Rep. 835, 171 C. C. A. 561; writ of certiorari granted, *Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co.* (1920), 64 L. Ed. 409, 251 U. S. 549, 40 Sup. Ct. Rep. 219, affirmed, *Chicago, M. & St. P. Ry. Co. v. McCaull-Dinsmore Co.* (1920), 253 U. S. 97, 64 L. Ed. 801, 40 Sup. Ct. Rep. 504.

2031-D. LIABILITY OF CARRIER TO REFUND FREIGHT CHARGES PAID BY THE SHIPPER ON A SHIPMENT THAT IS LOST, DAMAGED, OR INJURED IN TRANSIT.

In *Pennsylvania Rd. Co. v. Olivit Bros.*<sup>1</sup> the United States Supreme Court, per Mr. Justice McKenna, stated: "The fourth contention is that plaintiff should not recover as part of its damages the freight paid upon delivery at destination.

"The contention is rested upon the prohibition of the Interstate Commerce Act against deviation from the filed tariffs and schedules and against rebates and undue preferences and discriminations. It is not asserted in the present case that there was an evasion of the statute or an attempt to evade, but that the possibility of such result makes the recovery of freight illegal. It is urged, besides, that the melons were carried to destination and were there sold by plaintiff or on its account, and that freight thereby accrued and was properly paid. For which 2 Hutchinson on Carriers, 3d ed., Section 802, is cited. But the cited authority shows that to be the rule when the loss or damage results from no fault or negligence of the carrier. And, besides, to the contentions the plaintiff opposes the terms of the bills of lading, they providing that the amount of loss or damage for which a carrier is liable 'shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if paid, at the place and time of shipment . . . .'

"Some of the bills of lading do not contain this provision, but it was agreed at the trial that the proper measure of damages was to be computed upon the basis of the value of the property at the place and time of shipment and that such measure should be read into all of the bills of lading. As plaintiff further says, to recover the damages sustained by it, based upon this value, plaintiff must receive from defendant the difference between this value and the proceeds of the sale, and the freight paid. In this we concur, and therefore there was no error in including in the recovery such freight. *Shea v. Minneapolis, St. P. & S. Ste. M. R. Co.* 63 Minn. 228, 65 N. W. 458; *Davis v. New York, O. & W. R. Co.* 70 Minn. 37, 44, 72 N. W. 823; *Horner v. Missouri P. R. Co.* 70 Mo. App. 285, 294; *Tibbits v. Rock Island & P.*



*R. Co.* 49 Ill. App. 567, 572. The plaintiff was no more than made whole. Affirmed."

1. *Pennsylvania Rd. Co. v. Olivit Bros.* (1917), 243 U. S. 574, 37 Sup. Ct. Rep. 468, 61 L. Ed. 908, 913, affirming, 88 N. Y. L. 376, 96 Atl. 589; *Pennsylvania Rd. Co. v. Carr* (1917), 243 U. S. 587, 37 Sup. Ct. Rep. 472, 61 L. Ed. 914. See also, the following cases: *Pearse v. Quebec S. S. Co.* (1885), 24 Fed. Rep. 285; *Brown v. Cunard S. S. Co.* 147 Mass. 58, 16 N. E. 717; *Pierce v. Southern P. Co.* 120 Cal. 156, 40 L. R. A. 350, 47 Pac. 874, 52 Pac. 302, 1 Am. Neg. Rep. 211, 3 Am. Neg. 636; *Horner v. Missouri P. Rd. Co.* 70 Mo. App. 285; *Kelly v. Southern Ry. Co.* 84 S. C. 252, 137 Am. St. Rep. 842, 60 S. E. 198.

2031-E. ALLOWANCE OF ATTORNEYS' FEES IS UNAUTHORIZED IN SUITS  
UNDER SECTION 20 OF THE ACT.

The provision of Section 16 of the Interstate Commerce Act for an allowance to a shipper of an attorney's fee applies only to suits based on orders of the Interstate Commerce Commission making awards for violation of the Act, and does not authorize the allowance of such fees in an action for loss or damage to property in shipment.<sup>1</sup>

In *Atlantic C. L. Rd. Co. v. Riverside Mills*<sup>2</sup> the United States Supreme Court, per Mr. Justice Lurton, stated: "The judgment included an attorney's fees taxed as part of the costs. The authority for this is supposed to be found in the 8th section of the act to regulate commerce of February 4, 1887 (24 Stat. at L. pp. 379, 382, chap. 104, U. S. Comp. Stat. 1901, pp. 3154, 3159). The section reads as follows: 'That in case any common carrier subject to provisions of this act shall do, cause to be done, or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages of the provisions of this act, together with a reasonable counsel or attorneys' fee, to be fixed by the court in every case of recovery, which attorneys' fee shall be taxed and collected as part of the costs in the case.'

"But that section applies to cases where the cause of action is the doing of something made unlawful by some provision of the act, or the omission to do something required by the act, and there is a recovery 'of damages sustained in consequence of any such violation of this act', etc. The cause of action in the present case is not for damages resulting from 'any violation of the provision of this act'. True, the plaintiff in error attempted by contract to stipulate for a limitation of liability to a loss on its own line, and in this action has defensively denied liability for a loss not occurring on its own line. But the cause of action was the loss of the plaintiff's property which had been intrusted to it as a common carrier, and that loss is in no way traceable to the violation of any provision of the act to regulate commerce. Having sustained no damage which was a consequence of the violation of the act, the section has no application to this case.

The Judgment was erroneous to this extent, and the provision for an attorneys' fee is stricken out, and the judgment thus modified is affirmed."

1. *Missouri P. Ry. Co. v. Harper Bros.* (1912), 201 Fed. Rep. 671.
2. *Atlantic C. L. Rd. Co. v. Riverside Mills* (1911), 219 U. S. 186, 55 L. Ed. 167, 183, 31 Sup. Ct. Rep. 164, 31 L. R. A. 7, reversing, *Riverside Mills v. Atlantic C. L. Rd. Co.* (1909), 168 Fed. Rep. 990. On the question of allowance of attorneys' fees in suits involving loss or damage to freight under a State statute, in the absence of Congressional legislation covering the same subject, see *Missouri, K. & T. Ry. Co. v. Harris* (1914), 234 U. S. 412, 58 L. Ed. 1377, 34 Sup. Ct. Rep. 790.

2031-F. MEANING OF THE TERM "LAWFUL HOLDER" OF THE BILL OF LADING.

See "*Meaning of the term 'lawful holder' of the bill of lading,*" Section 2005-LL, *ante*.

2032. Appeal and error in suits under Section 20 of the Act.

2032-A. ERROR TO STATE COURT INVOLVING RIGHTS ASSERTED UNDER FEDERAL STATUTES.

A case which involves rights set up and denied that arose upon through interstate bills of lading issued under the "Carmack Amendment" of June 29, 1906, to Section 20 of the Interstate Commerce Act, is reviewable in the Federal Supreme Court on writ of error to a State court.<sup>1</sup>

Insufficiency or defective certification of a carrier's applicable tariff schedules on file with the Interstate Commerce Commission, which were admitted in evidence by the trial court, could not justify a State appellate court in arbitrarily disregarding such schedules when passing upon the question whether or not the carrier had limited its liability for the baggage of an interstate passenger to a specified sum unless a greater value is declared and excess charges paid.<sup>2</sup>

A decree of a State court denying to the defendant the benefit of a Federal statute compliance with which was set up in the answer and supported by testimony tending to show the truth of the allegations thereof is an adverse ruling on the Federal right which, under the Judicial Code, Sec. 237 (36 Stat. L. 1156, chap. 231, U. S. Comp. Stat. Supp. 1911, p. 227), warrants bringing the case up to the Federal Supreme Court by writ of error.<sup>3</sup>

Whether the arrival of an interstate shipment at destination, the payment of the freight by the consignee, his signature to a receipt for the shipment, and his removal of a part of the goods, leaving the rest, with the carrier's permission, to meet his convenience in removal, discharged the carrier's contract set forth in the bill of lading issued pursuant to the act of February 4, 1887, and created a new obligation as warehouseman, governed by the local law, which casts upon the warehouseman, in case of a loss by fire, the burden of showing that it was not negligent,—is a Federal question which will support the appellate jurisdiction of the Federal Supreme Court over a State court.<sup>4</sup>

A holding that facts which were otherwise pertinent and controlling in a suit against a carrier for delay in the delivery of an interstate shipment, in which the carrier relied upon certain conditions in the interstate bill of lading as a defense, must be put out of view because a bill of lading in the hands of an innocent purchaser is in fact negotiable paper, giving greater rights to him than could be enjoyed by the shipper or by the one from whom he had acquired the bill, amounts to a decision of a Federal question which will sustain a writ of error from the Federal Supreme Court to a State court.<sup>5</sup>

The concession in counsel's brief in the State court that a stipulation in an express company's receipt, limiting its liability to an agreed or declared value, made to adjust the rate, was void both under the



State law and under the "Carmack Amendment" of June 29, 1906, does not show the lack of any Federal question based upon the validity of such shipping contract which may be reviewed in the Federal Supreme Court, but must, at most, be regarded as a concession for purposes of argument as to a matter of law which could conclude no one, since it did not operate to withdraw the shipping contract from the case, nor its validity from the court's consideration.<sup>6</sup>

The question whether proper effect was given to the Interstate Commerce Act of February 4, 1887, and its amendments, in interpreting a stipulation in a bill of lading for an interstate shipment requiring notice of claims for damages to be given to the carrier's officers or station agents as excluding officers or station agents of connecting carriers,—is fairly presented, so as to sustain a writ of error from the Federal Supreme Court to review a judgment of the highest state court adjudging the stipulation to be no defense to the initial carrier when sued for injuries to the shipment, being unreasonable and inoperative, because no officer or agent primarily employed by the initial carrier was accessible at destination, where a through bill of lading was issued under the Federal legislation, the pleadings show that its application was invoked, and in the answer, as also in the instructions given at the defendant carrier's request, there was a distinct assertion that notice was not given to any officer or station agent of the connecting carrier, which means that the defendant was proceeding upon the theory that the stipulation, when read in connection with the Federal statutes, contemplated and recognized that notice to an officer or agent of the connecting carrier would suffice.<sup>7</sup>

1. Gulf, C. & S. F. Ry. Co. v. Texas Packing Co. (1917), 244 U. S. 31, 37 Sup. Ct. Rep. 487, 61 L. Ed. 970, 971.
2. New York, C. & H. R. Rd. Co. v. Beaham (1916), 242 U. S. 148, 37 Sup. Ct. Rep. 43, 61 L. Ed. 210.
3. Atchison, T. & S. F. Ry. Co. v. Robinson (1914), 233 U. S. 173, 34 Sup. Ct. Rep. 556, 58 L. Ed. 901.
4. Southern Ry Co. v. Prescott (1916), 240 U. S. 632, 36 Sup. Ct. Rep. 469, 60 L. Ed. 836.
5. Atchison, T. & S. F. Ry. Co. v. Harold (1916), 241 U. S. 371, 36 Sup. Ct. Rep. 665, 60 L. Ed. 1050.
6. Wells, Fargo & Co. v. Neiman-Marcus Co. (1913), 57 L. Ed. 469, 33 Sup. Ct. Rep. 267, 227 U. S. 469.
7. Northern P. Ry. Co. v. Wall (1916), 60 L. Ed. 905, 241 U. S. 87, 36 Sup. Ct. Rep. 493.

#### 2032-B. REVIEW OF INSTRUCTIONS OF STATE COURT INVOLVING MEANING OF WORDS "LAWFUL HOLDER" IN SECTION 20 OF THE ACT.

The contention that the owner of the shipment, or someone shown to be duly authorized to act for him in a way that would render any judgment recovered in the action against the carrier *res judicata* in any other action, is what was meant by the words "lawful holder" in the provisions of the "Carmack Amendment" of June 29, 1906, that any common carrier receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property, is not so frivolous as not to serve as the basis of a writ of error from the Federal Supreme Court to a State court to review a judgment rejecting such contention.<sup>1</sup>

1. Pennsylvania Rd. Co. v. Olivit Bros. (1917), 243 U. S. 574, 37 Sup. Ct. Rep. 468, 61 L. Ed. 908; Pennsylvania Rd. Co. v. Carr (1917), 61 L. Ed. 914, 243 U. S. 587, 37 Sup. Ct. Rep. 472.

## 2032-C. CONSTRUCTION OF AN INTERSTATE BILL OF LADING.

A terminal carrier is not relieved from liability for misdelivering an interstate shipment by the provisions of the "Carmack Amendment" of June 29, 1906, making the initial carrier liable for loss or damage occurring anywhere *en route*, with a remedy over against the carrier at fault, but the bill of lading which the initial carrier under that statute must issue governs the entire transportation, and thus fixes the obligation of all participating carriers to the extent that the terms of the bill of lading are applicable and valid.<sup>1</sup>

The words "lawful holder" as used in the provision of the "Carmack Amendment" of June 29, 1906, that any common carrier receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property, cannot be said to mean only the owner of the shipment or someone shown to be duly authorized to act for him in such a way as to render any judgment recovered in the action against the carrier *res judicata* in any other action, although by Section 8 of the earlier act a carrier is made liable "to the person or persons injured" in consequence of any violation of the act, since to adopt this view would permit the general purpose of the latter section to control the purpose of the amendment, which is special and definitely expresses the lawful holder of the bill of lading to be the person to whom the carrier shall be liable.<sup>2</sup>

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1. Georgia, F. & A. Ry. Co. v. Blish Milling Co. (1916), 241 U. S. 190, 36 Sup. Ct. Rep. 541, 60 L. Ed. 948.
  2. Pennsylvania Rd. Co. v. Olivit Bros. (1917), 243 U. S. 574, 37 Sup. Ct. Rep. 468, 61 L. Ed. 908; Pennsylvania Rd. Co. v. Carr (1917), 61 L. Ed. 914, 243 U. S. 587, 37 Sup. Ct. Rep. 472.

## 2032-D. THE FEDERAL RIGHT IS NOT REQUIRED TO BE PLEADED IN ANY SPECIAL OR PARTICULAR FORM.

A right, the creation of a Federal statute, was especially set up or claimed, and decided against, within the meaning of the Judicial Code, Section 237, governing writs of error from the Federal Supreme Court to state courts, where the action was one against the initial carrier of an interstate shipment to recover upon a through bill of lading for the negligence of the connecting carriers, as well as of itself, and was brought since the passage of the "Carmack Amendment" by which Congress took entire possession of the subject of the rights and liabilities growing out of contracts for interstate shipments, and the defendant carrier, though not specifically mentioning the Federal statute in its answer, did specifically plead a breach of the obligation under the bill of lading to report claims for damages to the terminal carrier in writing within thirty-six hours after the consignee had been notified of the arrival of the freight at the place of delivery, insisting that such obligation had not been complied with, and the state court, in deciding the case against the carrier, stated that a through bill of lading had been issued and would be controlling in the absence of special facts which it found as to the effect of verbal notice given to certain agents of the terminal carrier.<sup>1</sup>

In *St. Louis, I. M. & S. Ry. Co. v. Starbird*<sup>2</sup> the United States Supreme Court held that a judgment of the highest court of a state, which,



upon the ground of the validity of the stipulation in an interstate through bill of lading respecting the giving of notice of claims for damages, reversed in part a judgment in favor of the consignee in an action against the initial carrier to recover on such bill of lading for the negligence of connecting carriers as well as of itself, may be reviewed in the Federal Supreme Court on cross writ of error, where the consignee asserts that the provisions of the Act of June 29, 1906, are violated by such stipulation. Mr. Justice Day, in delivering the opinion of the court, stated: "A motion is made to dismiss the writ of error upon the ground that no Federal question was properly raised in the state court. The disposition of this motion requires a consideration of sec. 237 of the Judicial Code (36 Stat. at L. 1156, chap. 231, Comp. Stat. 1913, sec. 1214), which section is in effect but a re-enactment of sec. 25 of the Judiciary Act of September 24, 1789 (1 Stat. at L. 85, chap. 20), and sec. 709 of the Revised Statutes of the United States.

"This suit was brought by Miller, and revived by his administrator, to recover against the initial carrier, the St. Louis, Iron Mountain & Southern Railway Company, for its negligence and that of connecting carriers in failing to properly refrigerate certain carloads of peaches, shipped from a point in Arkansas to the city of New York, over the lines of the initial and connecting carriers, and in the last-named city delivered upon the dock of the Pennsylvania Company, and found to be in a bad condition. Each shipment was interstate and upon a through bill of lading, the bill containing, among other things, a stipulation that the carrier should not be liable for damages unless claims for damages were reported to the delivering line within thirty-six hours after the consignee had been notified of the arrival of the freight at the place of delivery. In the answer filed in the case, making one of the issues upon which the case was tried and decided, the defendant set up this clause in the bill of lading and the failure of the plaintiff to comply with it.

"Without now reciting other provisions of sec. 237, it is enough to say that a case is reviewable in this court where any title, right, privilege, or immunity is claimed upon a statute of the United States, and the decision is against the title, right, privilege, or immunity especially set up or claimed by either party under such statute.

"We have, therefore, to determine three propositions: (1) Was there a right involved which is the creation of a Federal statute? (2) Was it sufficiently set up and called to the attention of the state court so as to be 'especially set up or claimed,' within the meaning of the act? (3) Was the decision against the right set up or claimed under the Federal statute? If these requisites are complied with, the case is reviewable here.

"On June 29, 1906, Congress passed the so-called Hepburn Act (34 Stat. at L. 584, chap. 3591, Comp. Stat. 1913, § 8592, by § 20 of which it undertook to provide for the liability of carriers in interstate commerce, and to subject them, as to interstate shipments, to certain obligations which should supersede the varying requirements of the states through which interstate transportation might be conducted. The construction of this act came before his court in *Adams Exp. Co. v. Croninger*, 226 U. S. 491, 57 L. ed. 314, 44 L. R. A. (N. S.) 257, 33 Sup. Ct. Rep. 148, and upon full consideration it was held that the effect of the Carmack Amendment was to supersede all legislation in the partic-

ular states, and to embrace the liability of the carrier in interstate transportation. It was there said that almost every detail of the subject had been completely covered, and that there could be no rational doubt that Congress intended to take possession of the subject and lay down rules and regulations upon which the parties might rely and have their rights determined by a uniform rule or obligation. Among other things, the act required that the initial carrier should issue a receipt or bill of lading whenever it received property for transportation from a point in one state to a point in another state, and the initial carrier was made liable, not only for the results of its own negligence, but also for loss, damage, or injury to the property occasioned by any common carrier, railroad, or transportation company, to which the property should be delivered and over whose line or lines the property might pass; and it was provided that no contract, receipt, rule, or regulation should exempt such initial carrier from the liability imposed by the act.

“As the shipment in this case was interstate, there can be no question that, since the decision in the Croninger Case, *supra*, the parties are held to the responsibilities imposed by the Federal law, to the exclusion of all other rules of obligation. Since the Carmack Amendment, the carrier in this case is liable only under the terms of that act of Congress, and the action against it to recover on a through bill of lading for the negligence of connecting carriers, as well as of itself was founded on that Amendment. *Atlantic Coast Line R. Co. v. Riverside Mills*, 219 U. S. 186, 196, 55 L. ed. 167, 178, 31 L. R. A. (N. S.) 7, 31 Sup. Ct. Rep. 164.

“This principle has been so frequently recognized in the recent decisions of this court that it is only necessary to refer to some of them. In *Southern R. Co. v. Prescott*, 240 U. S. 632, 636, 639, 60 L. ed. 836, 838, 839, 36 Sup. Ct. Rep. 469, this court said:

“‘As the shipment was interstate, and the bill of lading was issued pursuant to the Federal act, the question whether the contract thus set forth had been discharged was necessarily a Federal question \* \* \*. Viewing the contract set forth in the bill of lading as still in force, the measure of liability under it must also be regarded as a Federal question, as it has often been said, the statutory provisions manifest the intention of Congress that the obligation of the carrier with respect to the services within the purview of the statute shall be governed by uniform rule in the place of diverse requirements of state legislation and decisions.’

“In *Southern Exp. Co. v. Byers*, 240 U. S. 612, 614, L. ed. 825, 827, L. R. A. 1917A, 197, 36 Sup. Ct. Rep. 410, this court said:

“‘Manifestly, the shipment was interstate commerce; and under the settled doctrine established by our former opinions, rights, and liabilities in connection therewith depend upon acts of Congress, the bill of lading, and common-law principles accepted and enforced by the Federal courts.’

“In the same effect, *Northern P. R. Co. v. Wall*, 241 U. S. 87, 91, 92, 60 L. ed. 905, 907, 908, 36 Sup. Ct. Rep. 493; *Georgia F. & A. R. Co. v. Blish Mill Co.*, 241 U. S. 190, 60 L. ed. 948, 36 Sup. Ct. Rep. 541; *Cincinnati N. O. & T. P. R. Co. v. Rankin*, 241 U. S. 319, 60 L. ed. 1022, L. R. A. 1917A, 265, 36 Sup. Ct. Rep. 555.



"2. As to the part of § 237, which deals with rights of this character, it requires that the right, privilege, etc., must be especially set up or claimed in order to make a decision of the state court a proper subject of examination by writ of error from this court.

"It would be superfluous to review the many decisions in which this court has had occasion to consider the effect of this provision, which has been in the law ever since the passage of the Judiciary Act of 1789 in practically the terms in which it is now embodied in § 237.

"It is manifest that the object of the provision is to require that the alleged right of a Federal character must in some way be drawn to the attention of the state court so that it may know, or, from the nature of the pleadings, be held to have known, that a Federal right was before it for adjudication.

"The Carmack Amendment is a Federal statute regulating interstate commerce. It was passed under the power conferred by the Constitution upon Congress to regulate such commerce, and is applicable throughout the United States, and at once became the rule of law governing such shipments in all the courts of the country. *Claffin v. Houseman*, 93 U. S. 130, 136, 23 L. ed. 833, 838; *Second Employers' Liability Cases (Mondou v. New York N. H. & H. R. Co.)*, 223 U. S. 1, 56 L. ed. 327, 38 L. R. A. (N. S.) 44, 32 Sup. Ct. Rep. 169, 1 N. C. C. A. 169.

"Since the passage of the Carmack Amendment, the state court must be held to have known that interstate shipments were covered by a uniform Federal rule which required the issuance of a bill of lading, and that that bill of lading contained the entire contract upon which the responsibilities of the parties rested. This is the result not only of our own holdings, but is universally held in the state courts.

"The Federal right is not required to be placed in any special or particular form. It is enough that it be relied upon and in a proper manner called to the attention of the court. Section 236, of the Judicial Code does not require that the statute creating the Federal right shall be especially set up. The courts take judicial notice of the statute. It is the right, privilege, or immunity of Federal origin which must be brought to the attention of the state court.

"This question has been frequently dealt with in the decisions of this court; under the Judiciary Act of 1789 a case arose which required a consideration of sec. 25 and the requirements to be observed in order to bring a case within its provisions,—*Crowell v. Randall*, 10 Pet. 368, 9 L. ed. 458. In that case the requirements of the Judiciary Act and the former decisions of this court were reviewed by Mr. Justice Story. Dealing with this feature of the law, he said:

"That it is not necessary that the question should appear on the record to have been raised and the decision made in direct and positive terms, *ipsissimis verbis*: but that it is sufficient if it appears by clear and necessary intendment that the question must have been raised, and must have been decided in order to have induced the judgment.'

"It is to be noticed, as to the manner of pleading, a Federal right, that Mr. Justice Story, observed that all that is essential is that it must appear by clear and necessary intendment to have been raised. When the answer in this case set up the requirement of the bill of lading upon which the suit was brought, and the failure to comply with it, that

was all that was necessary to fairly challenge the attention of the state court to rights existing by virtue of a Federal statute as to carriers in interstate commerce.

"In speaking of the necessity of especially setting up Federal rights under § 709 of Revised Statutes now § 237 of the Judicial Code, this court said, in *Green Bay & M. Canal Co. v. Patten Paper Co.*, 172 U. S. 58, 67, 43 L. ed. 364, 368, 19 Sup. Ct. Rep. 97.

" 'But no particular form of words or phrases has ever been declared necessary in which the claim of Federal rights must be asserted. It is sufficient if it appears from the record that such rights were specially set up or claimed in the state court in such manner as to bring it to the attention of that court.

" \* \* \* In *Roby v. Colehour*, 146 U. S. 153, 159, 36 L. ed. 922, 924, 13 Sup. Ct. Rep. 47, it was said that "our jurisdiction being invoked upon the ground that a right or immunity, specially set up and claimed under the Constitution or authority of the United States, has been denied by the judgment sought to be reviewed, it must appear from the record of the case either that the right so set up and claimed was expressly denied, or that such was the necessary effect in law of the judgment." "If it appear from the record, by clear and necessary intendment, that the Federal question must have been directly involved, so that the state court could not have given judgment without deciding it, that will be sufficient." *Powell v. Brunswick County*, 150 U. S. 433, 440, 37 L. ed. 1134, 1136, 14 Sup. Ct. Rep. 166; *Sayward v. Denny*, 158 U. S. 180, 39 L. ed. 941, 15 Sup. Ct. Rep. 777; *Chicago B. & Q. R. Co. v. Chicago*, 166 U. S. 226, 41 L. ed. 979, 17 Sup. Ct., Rep. 581.'

"In *Ferris v. Froham*, 223 U. S. 424, 56 L. ed. 492, 32 Sup. Ct. Rep. 263, it appears that the complainant asserted a copyright in a certain play under the common law and defendant set up the copyright for the play, the performance of which was sought to be enjoined, which copyright was issued under the laws of the United States. The state court enjoined the defendant from using that copyright, and it was held that was sufficient to show that a Federal right had been set up and denied, as the copyright of the defendant was derived under the Federal law. That the controversy raised a Federal question was held by this court and the contrary contention disposed of in the following language:

"The defendants in error contest the jurisdiction of this court upon the ground that the bill was based entirely upon a common-law right of property, and insist that the upholding of this right by the state court raised no Federal question. But the complainants sued, not simply to maintain their common-law right in the original play, but, by virtue of it, to prevent the defendant from producing the adapted play which he had copyrighted under the laws of the United States. They challenged a right which the copyright, if sustainable secured. Rev. Stat. sec. 4952. It was necessary for them to make the challenge, for they could not succeed unless this right was denied. Ferris stood upon the copyright. That it had been obtained was alleged in the bill, was averred in the answer, and was found by the court. The fact that the court reached its conclusion in favor of the complainants by a consideration, on common-law principles, of their property in the original play, does not alter the effect of the decision. By the decree Ferris was permanently enjoined 'from in any manner using \* \* \* the



said defendant's copyrighted play hereinbefore referred to for any purpose.' The decision thus denied to him a Federal right specially set up and claimed within the meaning of sec. 709 of the Revised Statutes of the United States. This court, therefore, has jurisdiction. *Chicago, B. & Q. R. Co. v. Illinois*, 200 U. S. 561, 580, 581, 50 L. ed. 596, 604, 605, 26 Sup. Ct. Rep. 341, 4 Ann. Cas. 1175; *McGuire v. Massachusetts*, 3 Wall. 382, 385, 18 L. ed. 164, 165; *Anderson v. Carkins*, 135 U. S. 483, 486, 34 L. ed. 272, 274, 10 Sup. Ct. Rep. 905; *Shively v. Bowlby*, 152 U. S. 1, 9, 38, L. ed. 331, 335, 14 Sup. Ct. Rep. 548; *Northern P. R. Co. v. Colburn*, 164 U. S. 383, 385, 386, 41 L. ed. 479, 480, 17 Sup. Ct. Rep. 98; *Green Bay & M. Canal Co. v. Patten Paper Co.*, 172 U. S. 58, 67, 68, 43 L. ed. 364, 368, 369, 19 Sup. Ct. Rep. 97.'

"In *Creswill v. Grand Lodge, K. P.*, 225 U. S. 246, 258, 56 L. ed. 1074, 1078, 32 Sup. Ct. Rep. 822, the defendants were enjoined from using their corporate name, and it was held that, as this right or privilege was derived under a statute of the United States, authorizing the incorporation, the case was reviewable here under § 237 of the Judicial Code.

"In *St. Louis I. M. & S. R. Co. v. McWhirter*, 229 U. S. 265, 57 L. ed. 1179, 33 Sup. Ct. Rep. 858, where a suit was brought to recover for a death occurring while plaintiff's intestate was engaged in interstate commerce, it was held that the question of the amount of evidence necessary to establish a liability was inherently of a Federal character, and that this court might review the decision of the state court for that reason.

"3. The other requisite essential to the case within § 237 of the Judicial Code is that the alleged Federal right must be denied. It has never been required that a Federal right must be denied in terms, but it has been uniformly held that it is sufficient if the state court necessarily denied it in the judgment rendered. If the plaintiff, in bringing suit to recover against the initial carrier, not only for its own negligence, but for that of the intervening carriers in the failure to care for and deliver the several cars of peaches, had said in terms that the suit was thus brought upon a through bill of lading because of the Federal statute giving the right to thus prosecute the action, no one would doubt that the Federal question was brought to the attention of the state court; when the plaintiff set forth facts which necessarily showed that a suit could only be maintained because of rights given under the Carmack Amendment, upon a bill of lading required by that act, it was unnecessary to further label the cause of action by specific reference to the Federal statute. *Jones Nat. Bank v. Yates*, 240 U. S. 541, 550, 551, 60 L. ed. 788, 796, 797, 36 Sup. Ct. Rep. 429. So, when the defendant set up the breach of the through bill of lading, and insisted that it had not been complied with, he would have made his case no stronger for the purposes of review here had specific reference been made to the Federal statute which made this bill of lading the sole rule of obligation between parties.

"The record presented a suit which showed that it was necessarily brought under rights conferred by a Federal act; the defendant specifically pleaded the failure to keep the obligation of the contract whose force was binding by virtue of such act; and the state court, in stating in its decision that this bill of lading had been issued, and would be controlling in the absence of special facts which it found as to the

effect of verbal notice given to certain agents of the Pennsylvania Company in New York necessarily denied the contention of Federal right made by the defendant that the provision of the bill of lading was conclusive of the rights of the parties in this case, and required written notice within thirty-six hours after notice to the consignee of the delivery of the goods.

“For these reasons the case is properly reviewable here.”

A Federal question is not presented as to sustain a writ of error from the Federal Supreme Court to the highest court of the state where the latter court declined to pass upon the question, because it was not appropriately raised in the trial court in the manner required by the State practice, and there does not appear to have been any attempt on the part of the State court to evade the decision of such question by an unwarranted resort to alleged rules of local practice.<sup>3</sup>

The question whether proper effect was given to the Interstate Commerce Act of February 4, 1887, and its amendments, in interpreting a stipulation in a bill of lading for an interstate shipment requiring notice of claims for damages to be given to the carrier's officers or station agents as excluding officers or station agents of connecting carriers,—is fairly presented, so as to sustain a writ of error from the Federal Supreme Court to review a judgment of the highest state court adjudging the stipulation to be no defense to the initial carrier when sued for injuries to the shipment, being unreasonable and inoperative, because no officer or agent primarily employed by the initial carrier was accessible at destination, where a through bill of lading was issued under the Federal legislation, the pleadings show that its application was invoked, and in the answer, as also in the instructions given at the defendant carrier's request, there was a distinct assertion that notice was not given to any officer or station agent of the defendant, or to any officer or station agent of the connecting carrier, which means that the defendant was proceeding upon the theory that the stipulation, when read in connection with the Federal statutes, contemplated and recognized that notice to an officer or agent of the connecting carrier would suffice.<sup>4</sup>

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1. *St. Louis, I. M. & S. Ry. Co. v. Starbird* (1917), 243 U. S. 592, 37 Sup. Ct. Rep. 462, 61 L. Ed. 917.

2. *Ibid.*

3. *Louisville & N. Rd. Co. v. Woodford* (1914), 234 U. S. 46, 34 Sup. Ct. Rep. 739, 58 L. Ed. 1202.

4. *Northern P. Ry. Co. v. Wall* (1916), 241 U. S. 87, 36 Sup. Ct. Rep. 493, 60 L. Ed. 905.

#### 2032-E. FEDERAL QUESTION WHEN RAISED TOO LATE.

A Federal question which the highest State court, apparently as matter of State practice, declared came too late to be considered, was not seasonably raised so as to afford the basis of a writ of error from the Federal Supreme Court to a State court.<sup>1</sup>

It is too late to object for the first time in the Federal Supreme Court to a defect in the documentary evidence which, if made below, could have been remedied.<sup>2</sup>

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1. *Missouri, K. & T. Ry. Co. v. Sealy* (1919), 248 U. S. 363, 39 Sup. Ct. Rep. 97, 63 L. Ed. 296.

2. *Missouri, K. & T. Ry. Co. v. Harriman Bros.* (1913), 227 U. S. 657, 33 Sup. Ct. Rep. 397, 57 L. Ed. 690.



## 2032-F. REVIEW OF HARMLESS ERROR.

A judgment of the highest State court which affirms a judgment against a carrier for the damages sustained by a shipper through a decline in market value due to an unreasonable delay in the transportation of an interstate shipment, will not be reversed because the trial court, by its instructions, erroneously permitted the jury to award as damages the amount of such decline in value without reference to a limitation in the bill of lading and in the carrier's published tariff that the carrier's liability for loss or damage is to be computed on the basis of the value of the shipment plus the freight at the time and place of shipment, unless a lower value is agreed upon, or because the trial court erroneously excluded such tariff with its conditions when offered in evidence, where, upon the facts as the highest court finds them to be, the agreed maximum of liability as stipulated is not exceeded by the judgment.<sup>1</sup>

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1. New York, P. & N. Rd. Co. v. Peninsula Produce Exchange of Maryland (1916), 240 U. S. 34, 36 Sup. Ct. Rep. 230, 60 L. Ed. 572.

## 2032-G. ERROR INVOLVING DECISION OF STATE COURT ON NON-FEDERAL GROUND.

A judgment of a State court enforcing the liability of two connecting carriers for the loss of an interstate shipment of rise, caused by an extraordinary flood, the waters of which, reaching some cars containing quicklime, started a fire which spread to the rise, is not reviewable in the Federal Supreme Court, although the State court ruled adversely upon the carriers' contention that, under the combined operation of the "Carmack Amendment" of June 29, 1906, stipulations in the bill of lading, and the common-law rule, they were not liable unless the plaintiff should show that the carrier on whose line the loss occurred negligently failed to take reasonable precautions to avoid it, where the court also found as a matter of fact from the testimony of the carrier's witnesses that such carrier negligently permitted the cars containing the rise to remain within the influence of the rising flood and in immediate proximity to the quicklime, when ordinary prudence required their removal to a place of safety.<sup>1</sup>

A decision of the highest State court affirming a judgment against a terminal carrier in an action by a shipper for damages on account of a delay in transit, cannot be said to rest upon a local ground independent of the question of the validity under the Federal Constitution of the provisions of S. C. Civ. Code, 1912, Sections 2754, 2755, making each carrier participating in a through shipment liable for loss or damage occurring anywhere *en route*, because the jury was instructed that there was a presumption which might be rebutted that the delay, if any, occurred on the line of the terminal carrier, where evidence offered by such carrier which would have a tendency to show that it was not in fault, and hence tending to rebut the presumption, was excluded from the consideration of the jury by a ruling that the statute imposed upon the terminal carrier the duty to respond to the shipper for the negligence of the initial carrier.<sup>2</sup>

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1. New Orleans & N. E. Rd. Co. v. National Rice Milling Co. (1919), 234 U. S. 801, 34 Sup. Ct. Rep. 726, 58 L. Ed. 1223.  
2. Atlantic C. L. Rd. Co. v. Glenn (1915), 239 U. S. 388, 36 Sup. Ct. Rep. 154, 60 L. Ed. 344.

2032-H. WHEN FINDING INVOLVING QUESTIONS OF FACT CONCLUSIVE ON  
UNITED STATES SUPREME COURT.

A verdict approved by the two lower courts will be accepted by the Federal Supreme Court as a conclusive finding upon the questions of fact involved.<sup>1</sup>

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1. *Chicago & E. I. Rd. Co. v. Collins Produce Co.* (1919), 249 U. S. 186, 39 Sup. Ct. Rep. 189, 63 L. Ed. 552.

2032-I. PRINTING USELESS MATTER IN THE RECORD.

Where most of the matter included in the record at the instance of petitioners was clearly not required for a proper presentation of the questions submitted, the court may order that the clerk's fees for supervising the printing of the record and the entire cost of printing be paid by the offending party.<sup>1</sup>

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1. *Texas & P. Ry. Co. v. Leatherwood* (1919), 250 U. S. 478, 39 Sup. Ct. Rep. 517, 63 L. Ed. 1096.

2032-J. FRIVOLOUS FEDERAL QUESTION.

No Federal question of the substantial character essential to support a writ of error from the Federal Supreme Court to a State court is involved in the contention that since the "Carmack Amendment" of June 29, 1906, the Federal law governs the right of a circus employee injured in a railroad collision to recover damages from the railway company which was hauling the circus train in interstate commerce, where the contract of employment and the contract between the circus company and the railway company released the latter from liability for negligence. This statute deals only with the shipment of property, not with the transportation of persons, and, in addition, the circus employee was not even a passenger upon the railway.<sup>1</sup>

The contention that the Federal law governs the rights and liabilities of the parties to an interstate shipment is too unsubstantial to afford the basis for a writ of error from the Federal Supreme Court to a State court, where the cause of action, if any, arose six years before the passage of the "Carmack Amendment" of June 29, 1906, by which such transactions were dealt with by Congress for the first time.<sup>2</sup>

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1. *Chicago, R. I. & P. Ry. Co. v. Maucher* (1919), 248 U. S. 359, 39 Sup. Ct. Rep. 108, 63 L. Ed. 294.
  2. *Missouri, K. & T. Ry. Co. v. Sealy* (1919), 248 U. S. 363, 39 Sup. Ct. Rep. 97, 63 L. Ed. 296.

2032-K. TRIAL DE NOVO IN APPEAL IN ADMIRALTY.

An appeal to a Federal circuit court of appeals from a final decree of a district court in a suit in admiralty brings the case before it for a trial *de novo* so that the court may review an interlocutory decree therein which was not appealed from, and allow a recovery against a party who was dismissed by that decree, and may review both interlocutory and final decrees so far as essential to grant relief to a party who had not appealed from either decree.<sup>1</sup>

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1. *Reid v. Fargo* (1916), 241 U. S. 544, 36 Sup. Ct. Rep. 712, 60 L. Ed. 1156.



### 2033. Rights and liabilities of carriers *inter sese*.

#### 2033-A. RECOURSE OF INITIAL CARRIER UPON THE CARRIER RESPONSIBLE FOR THE LOSS, DAMAGE, OR INJURY TO PROPERTY.

Section 20 (12) of the Interstate Commerce Act provides as follows:<sup>1</sup>

That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof.

The Interstate Commerce Act providing that an initial carrier shall be entitled to recover from the connecting carrier on whose line the loss, damage, or injury shall have been sustained, the amount it may be required to pay to the owners of such property authorizes a determination, in an action by an initial carrier against the connecting carrier for the loss of property, of the ultimate liability for the loss and a judgment for the initial carrier directly against whichever of the connecting carriers is to be deemed chargeable *inter sese* for the loss of the property.<sup>2</sup>

The words "required to pay," as used in the "Carmack Amendment" authorizing recovery by the initial carrier against the connecting carrier of damages it may be required to pay the shipper for loss or injury occurring on the line of the connecting carrier, mean asked to pay, or asked of right and by authority of law to pay and do not require as a condition precedent to recovery that it shall have actually paid a judgment recovered against it by the shipper.<sup>3</sup>

1. For the effect of this statute in the establishment of through routes, see *Coal Rates on the Stony Fork Branch* (1913), 26 I. C. C. Rep. 168.

2. *Hill Steamboat Line v. New York C. & H. R. Rd. Co.* 158 N. Y. Supp. 1084.

3. *St. Louis & S. F. Rd. Co. v. First National Bank of Elk City* (Okla. 1917), 171 Pac. 467.

#### 2033-B. PURPOSE OF THE STATUTE MAKING INITIAL CARRIER LIABLE.

Section 20 of the Interstate Commerce Act, explicitly provides that the initial carrier "shall be entitled to recover from the common carrier, railroads or transportation company on whose line the loss or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof." The initial carrier accordingly is entitled to judgment directly against whichever of the connecting carriers is to be deemed legally chargeable, *inter sese*, for the loss of the property. The statute was expressly framed to give to a court of law jurisdiction of an action brought directly against the responsible carrier which had paid a claim from the necessity of circuitously seeking reimbursement in the first instance from the preceding carriers successively. Where the initial carrier sues the connecting carriers, between whom unquestionably rests any issue of responsibility for nondelivery, Section 20, remedially and sensibly construed, authorizes the determination in that action of the ultimate liability for the loss.<sup>1</sup>

1. *Hill Steamboat Line v. New York C. & H. R. Rd. Co.*, N. Y. Supp. 158 N. Y. S. 1084, 1086.

2033-C. CONSTITUTIONALITY OF THE STATUTE PERMITTING RECOUPMENT BY THE INITIAL CARRIER AGAINST THE CARRIER RESPONSIBLE FOR THE LOSS, DAMAGE, OR INJURY TO PROPERTY TRANSPORTED.

See "*Constitutionality of the statute permitting recoupment by the initial carrier against the carrier responsible for the loss, damage, or injury to property transported.*" Section 2018-C, *ante*.

2033-D. DISMISSAL OF SUIT AGAINST CONNECTING CARRIER, AS A CO-DEFENDANT, DOES NOT AFFECT LIABILITY OF INITIAL CARRIER.

Where in a suit against the initial and the connecting carrier of an interstate shipment for delay and damage to goods the complaint is dismissed with plaintiff's consent as to the latter carrier the initial carrier may still be prosecuted and recovery had against it under the "Carmack Amendment," making such carrier liable for loss, damage, or injury caused by subsequent carriers.<sup>1</sup>

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1. *Shidlovsky v. Mallory S. S. Co.*, 111 N. Y. Supp. 778, 60 Misc. 67, 68.

2033-E. INITIAL CARRIER CAN ONLY RECOVER FROM CONNECTING CARRIER UPON PROOF OF ITS LIABILITY.

Under the "Carmack Amendment" of June 29, 1906, making the initial carrier liable for damage caused by the connecting carrier and allowing the former to recover of the latter for the amount of the judgment secured by the shipper, the initial carrier cannot so recover when it delivers cattle in an injured condition to the connecting carrier and there is no evidence to show that the damage sustained by the shipper was caused by the connecting carrier.<sup>1</sup>

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1. *Missouri, K. & T. Ry. Co. of Texas v. Jannon* (Tex. 1911), 141 S. W. 155.

2033-F. INITIAL CARRIER CANNOT BE DENIED ITS RIGHT OF RECOUPMENT AGAINST RESPONSIBLE CARRIER BY REASON OF AN INDEMNITY AGREEMENT WITH SHIPPER.

An interstate shipment passed over the lines of five connecting carriers. Plaintiff sued the initial carrier for damage to the goods. After the institution of the action it entered into an agreement with the last two connecting carriers that it would not further prosecute its suit against them and would protect them against the suit of anyone else, in consideration of the payment of \$275. *HELD*, under the "Carmack Amendment" of June 29, 1906, the initial carrier could not be deprived by this indemnity agreement of its right to recover the amount of any judgment paid by it against the two indemnified carriers, in case such carriers caused the damage.<sup>1</sup>

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1. *Carlton Produce Co. v. Velasco B. & N. Ry. Co.* (Tex. 1910), 131 S. W. 1187.

2033-G. LIABILITY OF INITIAL CARRIER UNDER THE BILL OF LADING CANNOT BE AMPLIFIED BY ACT OF A CONNECTING CARRIER.

An interstate shipment of apples was sent under a uniform bill of lading approved by the Commission, which provided that inspection would not be permitted without the consignor's consent. Plaintiff



consignor gave no consent and sent the bill of lading, with draft attached, to a Chicago bank for collection. The connecting carrier at Chicago, while retaining possession, allowed the consignee to inspect the apples in the car, and the consignee rejected the same, being under no legal contract to purchase them. Plaintiff did not prove the apples were damaged by the inspection or that the fact of inspection caused the consignee to reject them. *HELD*, the violation of the provision in the bill of lading against inspection by the connecting carrier did not, under the Carmack amendment making the initial carrier responsible for loss, damage, or injury caused by the connecting carrier, render the initial carrier liable for conversion of the apples.<sup>1</sup>

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1. *Earnest v. Delaware L. & W. Rd. Co.* (N. Y. 1912), 134 N. Y. Supp. 323, 326.

**2033-H. RESPONSIBILITY OF EACH CARRIER LIMITED TO THE DAMAGE CAUSED BY IT.**

Where a damage to live stock is caused on the line of several connecting carriers, between whom no partnership relation exists, each is liable only for the portion of the damage caused by it, as the initial carrier is the only carrier made liable by the "Carmack Amendment" to the "Hepburn Act" for all damage, irrespective of the line on which it takes place.<sup>1</sup>

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1. *Eastern Ry. Co. v. Montgomery* (Tex. 1911), 139 S. W. 885, 886.

**2033-I. CONNECTING CARRIERS ENTITLED TO ALL BENEFITS UNDER A SHIPPER'S CONTRACT WITH THE INITIAL CARRIER.**

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**2034. Limitation of liability of telegraph, telephone, cable and radio-telegraph companies in the transmission of messages.**

See "*Limitation of carrier's liability in the transmission of messages*," Section 5120, *post*, and "*Damages and reparation*," Section 5121, *post*.

**2035. Liability provisions of Section 20 of the Act inapplicable to the transportation of persons.**

In *Chicago, R. I. & P. Ry. Co. v. Maucher*,<sup>1</sup> the United States Supreme Court, per Mr. Justice Brandeis, stated: "The railway demands that, prior to the enactment of the Carmack Amendment (Act of June 29, 1906. \* \* \*) Congress had not dealt with the right of carriers to limit by contract their liability for injuries occurring in interstate transportation, and that consequently the states were free to establish their own laws and policies and apply them to such contracts. *Pennsylvania R. Co. v. Hughes*, 191 U. S. 477, 48 L. ed. 268, 24 Sup. Ct. Rep. 132. But it contends that this power of the states was superseded by the Carmack Amendment, since that amendment dealt with the power of carriers to contract in respect of such liabil-

ity (*Adams Exp. Co. v. Croninger*, 226 U. S. 491, 57 L. ed. 314, 44 L. R. A. (N. S.) 257, 33 Sup. Ct. Rep. 148; *Boston & M. R. Co. v. Hooker*, 233 U. S. 97, 50 L. ed. 868, L. R. A. 1915B, 450, 34 Sup. Ct. Rep. 526, Ann. Cas. 1915D, 593); that it was the intention of Congress to deal with the whole subject; and that the rights of plaintiff in respect to personal injuries are governed by the Federal law. But the Carmack Amendment deals only with the shipment of property. Its language is so clear as to leave no ground for the contention that Congress intended to deal with the transportation of persons. Furthermore, plaintiff was not even a passenger on the railway. His claim rests upon the general right of a human being not to be injured by the negligence of another. Compare *Southern P. Co. v. Schuyler*, 227 U. S. 601, 613, 57 L. ed. 662, 669, 43 L. R. A. (N. S.) 901, 33 Sup. Ct. Rep. 277. The case presents no substantial Federal question. The writ of error is dismissed."

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1. *Chicago, R. I. & P. Ry. Co. v. Maucher* (1919), 248 U. S. 359, 39 Sup. Ct. Rep. 108, 63 L. Ed. 294, 296.

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# Loose-Leaf Traffic Law Service

## Other People's Opinions

That TRAFFIC LAW SERVICE is being enthusiastically received throughout transportation circles is evidenced by the following commendatory and *unsolicited* statements from subscribers:

"TRAFFIC LAW SERVICE should be on the desk of every traffic man, railroad or industrial. It probably is, for that matter, or will be as fast as it can be brought to their attention. There is another class, however, who should also have this work and to them it will serve as a complete traffic library. They are sales managers, general managers, presidents, etc., of manufacturing concerns who do not employ trained traffic men."—*Mr. T. F. McClaren, T. M., Peninsular Portland Cement Co., Cement City, Mich.*

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"\* \* \* In this connection will state that since the purchase of your book the same has been of unlimited value to us and we will never overlook an opportunity of recommending your work highly, as it is our opinion that your work should be in the hands of every up-to-date traffic manager."—*Mr. I. W. Preetorius, T. M., Mid-West Box Co., Chicago, Ill.*

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"We acknowledge your letter of the 25th, also Chapters 6 and 37 of the LOOSE-LEAF TRAFFIC LAW SERVICE, and compliment you upon the manner in which the subjects in these two Chapters have been covered. It would be difficult to estimate the value of Chapter 6 in the average traffic office."—*Mr. R. J. Sheidinger, T. M., Consolidated Paper Co., Monroe, Mich.*

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# Loose-Leaf Traffic Law Service

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